

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

76-1001

To be argued by
ALAN R. KAUFMAN

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PMS

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1001

UNITED STATES OF AMERICA,

Appellee,

—v.—

VICTOR LEONG, ERNST OLSEN and
WONG CHOU SHEK,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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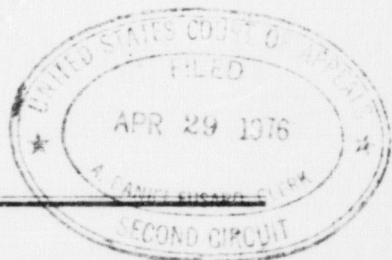


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FOR THE SECOND CIRCUIT

Docket No. 76-1001

UNITED STATES OF AMERICA,

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—v.—

VICTOR LEONG, ERNST OLSEN and WONG CHOU SHEK,
Defendants-Appellants.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Victor Leong, Ernst Olsen, and Wong Chou Shek appeal from judgments of conviction entered on December 16, 1975 in the United States District Court for the Southern District of New York, after a four-week trial before the Honorable Robert J. Ward, United States District Judge, and a jury.

Indictment 75 Cr. 229, filed on March 5, 1975 in 16 counts,* charged Victor Leong, Ernst Olsen, and Wong Chou Shek (hereinafter "Wong Chou"), along with 22 others, with violations of the federal narcotics laws. The trial below was limited to Counts One, Two, Six, Eleven

* Indictment 75 Cr. 229 superseded Indictments 74 Cr. 887 and 75 Cr. 162, filed September 18, 1974, and February 19, 1975, respectively.

and Fourteen.* Count One charged all 25 defendants with a conspiracy to import heroin into the United States and export heroin from the United States, and to possess and distribute heroin in the United States, in violation of Title 21, United States Code, Sections 846 and 963. Counts Two, Eleven and Fourteen, respectively, charged Olsen with the substantive offenses of possessing with the intent to distribute 5.25 kilograms of heroin on August 26, 1971, 3.5 kilograms of heroin on December 3, 1971, and 9.45 kilograms of heroin on March 8, 1972; Count Six charged Leong with possessing with the intent to distribute one-quarter kilogram of heroin on September 16, 1971, all in violation of Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).

Trial commenced on September 23, 1975, and on October 20, 1975, the jury returned verdicts of guilty against Leong, Olsen, and Wong Chou Shek on all counts.**

* Each of the remaining counts charged one or more of the defendants not on trial with substantive violations of the federal narcotics laws.

** The defendant Louie Yiu Che was found not guilty. The status of the remaining 21 defendants is as follows: Bing Hin Low and Li Chi Ying ("Robert Li") were extradited from Canada, pleaded guilty to the conspiracy count and are awaiting sentence; Johnny Chau was extradited from Canada, pleaded guilty to the conspiracy count and was sentenced to one year's imprisonment; Wong Shue Teen ("Tony Wong") was extradited from Canada, went to trial before Judge Ward and a jury, and was acquitted on March 19, 1976; Paul Jang was not ordered extradited, and presumably is in Canada; the whereabouts of Conny Andre Gustaffson, Erik Max Hansen, John Christiansen, Arne Anderson, and Bill Fern were and still are unknown. Steiner Furu was apprehended in Norway, tried and convicted there, and sentenced to seven years' imprisonment; Bernard Dalan jumped bail here, fled to Norway and is in custody there pending trial; Lee Louie pleaded guilty to Count Three (he also pleaded guilty to single counts in three other indictments consolidated before

[Footnote continued on following page]

On December 16, 1975, Leong was sentenced to concurrent sentences of three years' imprisonment, to be followed by three years' special parole. Olsen was sentenced to concurrent sentences of fifteen years imprisonment, to be followed by three years' special parole. Wong Chou Shek was sentenced to five years' imprisonment, to be followed by three years' special parole. All three are currently serving their sentences.

Statement of Facts

A. The Government's Case

1. Introduction

The trial of this case revealed the inner workings of an international narcotics conspiracy which was responsible for smuggling approximately 200 pounds of pure heroin from Bangkok, Thailand to North America in 1971 and 1972. The heroin was brought from Bangkok to New York and Vancouver, British Columbia by sea and by air, hidden in custom-built double-shelled suitcases, and thereafter distributed in New York, Vancouver and San Francisco.

The proof at trial showed that Ernst Olsen was the chief smuggler; that Wong Chou Shek was the San Francisco distributor; and that Victor Leong was a customer of the New York distributor, with an interest in distributing heroin himself in Vancouver.

Judge Ward), and he was sentenced to seven years' imprisonment; Pon You Wing pleaded guilty to the conspiracy count, and he was placed on five years' probation; George Kay Lew is dead and an order of *nolle prosequi* will be filed as to him as well as to Eng Fong, Lam Shing, Wee Sik Moy, Philip Choy Tong and Roland Chu; Chan Cheung is unidentified.

2. The Conspiracy Begins

In the spring of 1971, Wong Shing Kong (also known as Stanley Wong, hereinafter "Stanley") and Sze Chun Kam (also known as Charlie, hereinafter "Charlie") were shipmates on the *Jens Maersk*.^{*} Charlie told Stanley that he knew a man in Bangkok who was interested in exporting heroin, and when Stanley, who had previously brought heroin to the United States, expressed an interest in meeting this man, Charlie set it up. In May or June, 1971, Charlie introduced Stanley to Ma Ssu Ts'ung (hereinafter "Ma") at Ma's Rusami jewelry store in Bangkok.^{**} Ma and Stanley struck a deal: Ma would supply the heroin, and Stanley would arrange for it to be smuggled into the United States and would also locate the distributors here. Stanley had previously done business with Lam Kin Sang (hereinafter "Lam") in New York, and Lam was Stanley's intended distributor for Ma's heroin. (Tr. 109-128, 200-202, 2029-2033).^{***}

Stanley's first attempt to get Ma's narcotics out of Bangkok was a failure. Ma had 22½ pounds of heroin and 100 pounds of opium in Bangkok. Ma's associate, Anuk,^{****} attempted to deliver the narcotics by speedboat to a seaman on board the *Clifford Maersk* who was to take the narcotics to New York. Anuk was unable to get the narcotics on board the *Clifford Maersk*, and he

^{*} Both Stanley and Charlie were of Chinese ancestry. Stanley had been born in Hong Kong and Charlie in mainland China.

^{**} Ma is a named defendant in Indictment 74 Cr. 886 and was named as a co-conspirator in Indictment 75 Cr. 229. He is presently believed to be in Thailand, the Government's extradition request having been pending in Thailand for well over a year.

^{***} References to the trial transcript are abbreviated herein as "Tr.", and Government Exhibits as "GX".

^{****} Anake Yensooksakul is a named defendant in Indictment 74 Cr. 886 and was named as a co-conspirator in 75 Cr. 229. His status is the same as Ma's.

returned to Stanley's hotel room with the 22½ pounds of heroin. By this time, Stanley had already met Ernst Olsen, a Danish national (GX 20), at the Bangkok pier and had told Olsen of his new business venture. Olsen agreed to help Stanley in the smuggling operation and was in Stanley's hotel room when Anuk returned with the undelivered heroin. Following Anuk's failure to deliver the narcotics to the *Clifford Maersk*, Olsen agreed to go to Japan to try to sign on a ship there. (Tr. 128-136, 149-157).

Before Olsen left, Stanley and he stored the narcotics in Bangkok. Olsen picked up the 100 pounds of opium from Ma's store and brought it to Stanley's hotel room where they packed the narcotics into two trunks. Olsen then took the trunks to the Mariner's Club where he stored them, and where they remained until August. Olsen then flew to Japan on June 13, 1971, and remained there until August 14, 1971, vainly trying to sign on a ship. While in Japan, however, Olsen met another seaman, Steiner Furu, who was already signed onto the *Thomas Maersk* and who was then recruited by Olsen to bring heroin into the United States from Bangkok. Furu's services were destined to be utilized at a later date. (Tr. 157-165; GX 39).

While Olsen was in Japan, Stanley went to Hong Kong, where he had some suitcases custom-made. The suitcases were patterned on the Samsonite brand, with a significant addition: they were double-shelled on both sides, with the outer shell riveted onto the suitcase, and with the spaces in-between the shells capable of holding up to ten pounds of heroin per suitcase. (Tr. 165-170, 185-186, 195-199; GX 18).

3. The First Shipment

Once Stanley obtained the suitcases, he contacted Olsen in Japan, told him to forget about looking for a ship, and to come to Hong Kong. Olsen arrived on August 13, 1971, and after he inspected the suitcases, he agreed to fly with them and their contents of heroin to New York. Olsen obtained an American visa in Hong Kong on August 16th and, on August 19th, Stanley and Olsen returned to Bangkok. Olsen retrieved the heroin and opium from the Mariner's Club. Stanley and Olsen hid the opium in the ceiling of their hotel room, and packed the 22½ pounds of heroin into four of the suitcases. Stanley then called Lam Kin Sang in New York, and told him that Olsen would be bringing heroin to New York shortly. (Tr. 186-203, 735-738; GX 17, 20, 38).

In late August, Stanley, Ma Ssu Ts'ung and Tony Ma * took Olsen to the airport. They sent two of the suitcases to New York by air cargo addressed to the Swedish Seaman's Center in Brooklyn; then Olsen checked the remaining two suitcases onto the flight that he took to New York. (Tr. 203-204).

After Olsen arrived in New York he contacted Lam, who picked him up in Brooklyn. Olsen was carrying the two suitcases. Lam drove Olsen to the George Washington Hotel in Manhattan, where Olsen took the suitcases apart, revealing the heroin hidden within. Lam then left with the heroin. The next day, Stanley and Olsen picked up the other two suitcases at the airport, brought them back to Lam's house in Flushing, where Lam repacked the heroin into one pound bags. (Tr. 738-742, 747-750; GX 48).

* Tony Ma is the nephew of Ma and was named a defendant in Indictment 74 Cr. 886 and a co-conspirator in 75 Cr. 229. His status is the same as Ma's and Anake's.

Lam then started selling the heroin. His first customer was Lee Louie, to whom he sold a pound. The proceeds of that sale were turned over to Olsen who then left New York for Bangkok, checking out of the hotel on September 3, 1971. Lam thereafter sold a second and a third pound to Lee Louie. (Tr. 750-757).

4. The Victor Leong Transaction

After the Lee Louie sales, Lam met Victor Leong at the Tung On Gambling Club in Manhattan. Leong was staying at the George Washington Hotel in Manhattan, having checked in on September 16, 1971. Leong agreed to buy a half pound of heroin from Lam for \$2,000. Lam delivered the heroin to Leong who did not pay for it, saying instead that he would sell it first in Vancouver and pay Lam out of the proceeds of his sale. (Tr. 758-761; GX 45).

About a week later Leong gave some of the proceeds to Lam, saying that when he sold the rest of it he would pay Lam the remainder due. At this time, Lam told Leong that he was going to San Francisco to look for some customers. Leong said he also was going there, and so together they flew to San Francisco, with Lam carrying four pounds of heroin. (Tr. 761-762).

5. The San Francisco Transactions— Wong Chou Shek

Lam arrived in San Francisco around the end of September, 1971. He called Wong Chou Shek, (hereinafter "Wong Chou"), whom he already knew as a gambler. They met at the Dai Loy gambling house owned by Wong Chou. Lam told Wong Chou that he had some heroin with him and asked Wong Chou if Wong Chou could make some sales for him. Wong Chou said he had never done it before, but he introduced Lam to Pon You Wing

(hereinafter "Pon"). Wong Chou told Pon that Lam was a friend; that Lam had heroin to sell at \$6,500 per pound and asked Pon if he knew any customers. Pon didn't and after checking around for a few hours Pon was unable to find any customers. (Tr. 762-768, 1332-1333).

Thereafter, Wong Chou asked Pon to work for him and deliver heroin to customers that Wong Chou had found. Pon agreed to this, and also to Wong Chou's request that he go to New York and bring back heroin from Lam. (Tr. 1333-1337).

Before going to New York, Pon made two deliveries of heroin: a half-pound to Louie Yiu Che ("Louie Gin"), for which Pon received \$2,800 which he turned over to Wong Chou; and a half-pound to a man called Dung Wong for \$3,300, which Pon turned over to Lam when he was unable to find Wong Chou. (Tr. 1337-1350, 1354-1357).

6. Leong Meets Lam Again in New York

Lam himself delivered two pounds of heroin to another of Wong Chou's San Francisco customers, George Kay Lew. Lam then returned to New York in early October, 1971. He had a few one pound transactions with some New York customers, and then met Victor Leong again. Leong gave Lam some money for the half pound that he had previously received, and told Lam that he was going to Vancouver to look for buyers. Lam agreed to supply Leong with heroin for any customers Leong found in Vancouver. (Tr. 771-773, 775-782).

7. Pon You Wing Comes to New York Twice to Bring Heroin Back to Wong Chou Shek in San Francisco

Soon after Lam returned to New York, Wong Chou instructed Pon to go to New York to pick up heroin from Lam. Wong Chou gave Pon an airline ticket to New York, plus \$10,000 to give to Lam. Pon came to New York, met with Lam and gave him Wong Chou's money, and a few days later received heroin from Lam at Lam's house in Flushing. Pon then returned to San Francisco,* and checked into a Holiday Inn with the heroin. Within a few days, George Kay Lew picked up five pounds of heroin from the room. A few days later Pon and Lam met Wong Chou outside the Holiday Inn with the remaining two pounds of heroin. Pon and Lam got into one car and followed Wong Chou who was driving his car. They followed Wong Chou to Mason and Union Streets and when Wong Chou stopped, they did also. Lam and Pon exited the car and entered Wong Chou's car,** leaving the two pounds of heroin in the first car. At that time, Pon observed Louie Yiu Che ("Louie Gin") and two other males walking to the car with the heroin in it. (Tr. 782-784, 789-791, 794-796, 1357-1369).

A short while later, Wong Chou told Pon to go to New York to pick up more heroin from Lam, and Wong

* Pon testified that he received seven pounds of heroin from Lam on this trip, and that Lam and Lam's girl friend accompanied him back to San Francisco (Tr. 1362-1363). Lam testified that that was what happened on Pon's second trip to New York, a few weeks later in October, and that on Pon's first trip, Lam gave him four pounds and that Pon returned to San Francisco alone. (Tr. 789). That was Pon's testimony relating to his second trip. Evidently, one of the witnesses transposed the facts of the first two trips.

** Lam testified that he walked away from the scene and did not enter Wong Chou's car, and therefore did not see who it was who picked up the two pounds. (Tr. 796, 1064).

Chou gave Pon another \$10,000 to give to Lam, plus an airline ticket purchased at the Global Travel Agency in San Francisco under the name L. Yee for a flight on October 27, 1971. Pon flew to New York and checked into the Kew Motor Inn in Queens under the name Peter Lee on October 27. Pon turned the money over to Lam, and within a day or two, Lam gave the heroin to Pon. Pon returned to San Francisco. (Tr. 1383-1391; GX 27, 71).

Pon took the heroin to an apartment he had previously rented for use as a stash pad, at Wong Chou's suggestion, at 1390 Washington Street, a building owned by Wong Chou's elder sister. (Tr. 1392-1395, 1497-1500).

Two days later, at Wong Chou's apartment at 18 Doric Alley, Pon met Wong Chou and Wong Chou drove Pon to the stash pad where he told Pon to get two pounds of heroin and deliver it to George Kay Lew's apartment at 1523 Hyde Street, and Pon did that. (Tr. 1395-1399).

A few days later, Wong Chou again drove Pon to 1390 Washington Street and told Pon to get the remaining two pounds out of that apartment and give it to the defendant Louie Yiu Che ("Louie Gin"). Pon retrieved the heroin and returned to Wong Chou's car. They drove to Louie's apartment and Louie met them outside. Wong Chou told Louie that there were too many people around and that Louie should follow in his car. At that point, Wong Chou, Pon and Louie all got into Wong Chou's car and drove to Vallejo and Columbus Streets, and Louie's friend followed in another car. At Vallejo and Columbus, Pon brought the heroin to Louie's friend in the second car. Then, Wong Chou, Louie and Pon returned to Louie's apartment. Wong Chou and Pon waited outside in the car while Louie went into his apartment, and in a few minutes Louie came outside and gave Wong Chou some money. Wong Chou and Pon returned to

Wong Chou's apartment at 18 Doric Alley and there they counted \$11,200 that Louie had just given to Wong Chou. Out of that money, Wong Chou gave Pon \$500. (Tr. 1399-1403).

8. Stanley and Ernst Olsen Send Four Shipments of Heroin to New York

While the 22½ pounds of heroin that Olsen had brought to New York in late August were being distributed in New York and San Francisco, Stanley and Olsen were arranging to send more heroin from Bangkok to New York. Ma and Tony Ma had delivered substantial quantities of heroin which Stanley and Olsen packed in additional double-shelled suitcases that Stanley had obtained, and Olsen actively recruited seamen from Maersk Line ships to take the heroin to New York. (Tr. 204-208, 253-255, 264-265, 268, 2037).

In early October, the *Thomas Maersk* was docked in Bangkok. Olsen brought two seamen from that ship to meet Stanley: a man named Gustaffson, and Steiner Furu, the latter being the seaman that Olsen had first recruited in Japan (p. 5, *supra*). Furu and Gustaffson agreed to bring 15 pounds of heroin and the 100 pounds of opium * to New York for \$4,500. Stanley and Olsen drove the seamen to the pier with the heroin and opium, the seamen loaded it on board the ship, and the *Thomas Maersk* left Bangkok on October 3, 1971. (Tr. 255-263; GX 36).

A few weeks later, Olsen introduced Stanley to a seaman named John from the *Trein Maersk*, and John took two suitcases with 15 pounds of heroin aboard the *Trein*

* This was the opium left over from the unsuccessful attempt to make a delivery to the *Clifford Maersk* in June 1971 (pp. 4-5, *supra*).

Maersk which left Bangkok on October 23, 1971. (Tr. 268-271; GX 36).

At this time the *Luna Maersk* was also in Bangkok and one of the seamen on that ship was John Thomsen. Olsen met Thomsen at the Mariner's Club and Olsen recruited Thomsen to bring 20 pounds of heroin to New York for \$2,500. Olsen and Thomsen took three suitcases containing the 20 pounds of heroin from the house that Olsen and Stanley shared to the *Luna Maersk*, and Thomsen brought the suitcases on board. Olsen told Thomsen that when Thomsen arrived in New York he should leave the suitcases in the Swedish Seaman's Center in Brooklyn. On October 28, 1971, the *Luna Maersk* left Bangkok. (Tr. 272-273, 1686-1697; GX 36).

In early November, the *Lica Maersk* was docked in Bangkok. Olsen introduced Stanley to a seaman from that ship named Erik, who was willing to bring heroin to New York. Erik took two suitcases containing about eighteen pounds of heroin on board the *Lica Maersk* and that ship left Bangkok on November 8, 1971. (Tr. 273-274; GX 36).

The second ship to have left Bangkok in this series of four—the *Trein Maersk*—arrived in Hong Kong on its way to New York on November 10, 1971. At that time the seaman, John—who had by then become sick and afraid of the possible consequences of his involvement—signed off and flew back to Bangkok where he returned the two suitcases of heroin to Stanley. (Tr. 271). As of November 10, 1971, there were three ships steaming to New York with a combined cargo of approximately 53 pounds of pure heroin. (Tr. 271-272; GX 36).

With the departure of the *Lica Maersk* from Bangkok, Olsen flew to the United States on November 14, 1971 to await the arrival of the ships. (Tr. 276-279, 2038-2039; GX 82, 93).

9. Stanley Meets Bing Hin Low and Establishes Vancouver as Another Distribution Point

Soon after C... n left for the United States, Stanley flew to Vancouver. One reason for Stanley's trip to Vancouver was to obtain an American visa, which he received there on November 19, 1971. While in Vancouver, Stanley met Robert Li, an old friend, who told Stanley that Johnny Chau, a friend of Li's, knew a big heroin buyer, and inquired if Stanley wanted to do business. Stanley said he did, but only if Robert Li and Johnny Chau would represent his interests in Vancouver with this buyer. Robert Li and Johnny Chau agreed, in return for 10 per cent of the profits. (Tr. 279-287, 292-293).

Robert Li then introduced Stanley to the big buyer, Bing Hin Low (hereinafter "Bing"). Bing wanted five pounds of heroin immediately, and Stanley told him that a shipment of heroin was due in New York shortly and that Bing could have five pounds from it. Bing also told Stanley that he wanted ten pounds by Christmas. (Tr. 287-290).

10. The Thomas Maersk Arrives in New York and the Heroin is Distributed

After making his deal with Bing, Stanley flew to New York where he was met at the airport by Ernst Olsen and Lam Kin Sang, and they drove to Lam's house in Flushing where Olsen was living, still awaiting the arrival of the ships. (Tr. 296-298).

The first ship to arrive was the *Thomas Maersk*, on November 29, 1971. Stanley and Olsen drove to Pier 11 in Brooklyn where the ship was docked, but they were

unable to locate Furu and Gustaffson. Stanley left Olsen in the vicinity of the pier with instructions to call him at Lam's house when Olsen located the seamen. A few hours later, Olsen called Stanley and told him that he had found Furu and Gustaffson. Stanley and Lam then drove to Hansen's Bar near Pier 11 and there they found Olsen, Furu and Gustaffson with the two suitcases containing 15 pounds of heroin. The suitcases were put into Lam's car, and Stanley told Furu to try to get the 100 pounds of opium off the ship. Furu was unable to, and Stanley told Furu to unload the opium when he returned to Hong Kong. (Tr. 298-303, 800-802; GX 36).

Stanley, Lam and Olsen returned to Lam's house in Flushing, and Olsen and Stanley took one of the suitcases apart and gave 7½ pounds to Lam. Five pounds from the other suitcase were destined for Bing Hin Low in Vancouver; Lam asked Stanley for the extra 2½ pounds, and Stanley agreed to give it to Lam in Vancouver. (Tr. 303-306, 801-804).

Olsen then flew to Toronto with one suitcase containing 7½ pounds of heroin, where Olsen was to meet Johnny Chau and give him the heroin to bring to Vancouver. Olsen met Johnny Chau in Toronto, but Johnny Chau refused to fly the heroin to Vancouver because he thought that the suitcase was too conspicuous, so Olsen himself flew the heroin to Vancouver where he delivered it to Robert Li. Olsen returned to New York immediately. (Tr. 306-313, 804-807).

A number of people then converged in Vancouver. Wong Chou Shek called Lam in New York and told Lam that he knew a buyer in Vancouver, and Lam agreed to meet Wong Chou in Vancouver to meet this buyer. On December 6, 1971, Wong Chou flew from San Francisco to Vancouver. On December 8, 1971, Lam flew from

New York to Vancouver.* (Tr. 808-810, 1403, 1406; GX 28, 50).

The day before Lam's trip to Vancouver, on December 7, 1971, Pon You Wing made his third, and last, trip to New York for heroin. On that day, Lam gave Pon four pounds of heroin to bring back to San Francisco, which Pon did on December 8, the same day that Lam flew to Vancouver. (Tr. 796-799, 1408-1411; GX 73).

In Vancouver, Wong Chou met Lam at the airport and later that day, introduced Lam to Paul Jang ("Communist Pui"). Jang wanted a sample of the heroin and Lam called Stanley (who had come to Vancouver when Olsen had returned to New York and who had already delivered the five pounds of heroin to Bing), and Stanley delivered a sample to Lam. Lam gave it to Jang, who returned a few hours later and agreed to buy 3½ pounds of heroin. Stanley delivered to Lam the remaining 2½ pounds of heroin that he had promised Lam, and Lam imposed on Stanley and Johnny Chau, for a fee of \$300, to mix the heroin with a pound of milk sugar that Lam had brought from New York. The resultant 3½ pounds was thereafter left under a car outside of Robert Li's house for the customer to retrieve. Wong Chou Shek returned to San Francisco, and Stanley and Lam returned to New York. (Tr. 334-351, 810-819).

11. The San Francisco Undercover Case

While this was occurring in Vancouver, Pon You Wing had returned to San Francisco on December 8, 1971 with the four pounds of heroin. He sold three

* The telephone toll records (GX 67) of Wong Chou Shek's residence at 18 Doric Alley show a call placed to Paul Jang in Vancouver on December 6, 1971.

pounds to George Kay Lew while Wong Chou Shek was still away from San Francisco. When Wong Chou returned to San Francisco two days after that delivery, Pon told him about it. That night, at Wong Chou's apartment at 18 Doric Alley, Wong Chou showed Pon the \$18,000 George Kay Lew had just delivered to him for those three pounds. (Tr. 1411-1415).

Then Pon made what was for him an unfortunate mistake. He located a customer on his own instead of relying on Wong Chou's customers. The customer Pon located turned out to be an undercover San Francisco policewoman, and Pon, using the name "Wong", sold her one ounce of the remaining pound of heroin, and then two ounces. (Tr. 1415-1417, 1577-1584).

On December 13, 1971, in the midst of Pon's dealings with the policewoman, Wong Chou asked Pon to accompany him to a number of banks, which Pon did, where Pon, at Wong Chou's instructions, purchased three money orders totalling \$8,000, representing moneys that Wong Chou owed Lam for heroin. Wong Chou drove Pon to three different Bank of America branches where Pon purchased the money orders, and then to a post office where they were mailed to Lam. Upon receipt, Lam forwarded them to Stanley, who in turn gave them to Ma Ssu Ts'ung in Bangkok who cashed them. Just as the heroin in this case flowed from Bangkok to distribution points in North America such as New York and then to San Francisco, so the money resulting from those sales followed that same connection in reverse, from Wong Chou Shek in San Francisco back to New York, and then on to Bangkok. (Tr. 455-456, 827, 1417-1421, 1594-1597, 1663; GX 68, 69, 70).

Two days after Wong Chou and Pon went to the banks, Pon arranged to deliver what was left of that last pound, about 13 ounces, to the policewoman, and Pon was

arrested on the morning of December 15, 1971 in possession of the heroin. Wong Chou was also detained that day, then released. (Tr. 1421-1422, 1584, 1602-1603, 1666-1667).

While this was going on in San Francisco, Stanley and Olsen were still in New York awaiting the arriving of the *Luna Maersk* and the *Lica Maersk*, and they were staying at Lam's house in Flushing. (Tr. 351-352).

In the middle of December 1971, Stanley received a telephone call at Lam's house in Flushing from a man calling himself Wong. This man Wong said he was calling from San Francisco, that he was a friend of Lam's and that Lam had mentioned Stanley's name to him. This man Wong knew that Stanley supplied the heroin to Lam, and Wong asked if he could buy directly from Stanley. He wanted ten pounds. Stanley refused, saying he dealt only with Lam, and the next day Stanley told Lam about the call, and Lam told Stanley that he indeed did do business with a man in San Francisco named Wong. (Tr. 352-356).*

A few days later, Lam learned of the arrests in San Francisco on December 15, and told Stanley that he ought to leave the United States since Wong Chou knew Stanley's name. (Tr. 856, 800, 807).

Lam also told Stanley not to deliver the heroin that was still coming in on the *Luna Maersk* and the *Lica Maersk*. Stanley told Olsen what was going on and instructed Olsen to write to the seamen on those two ships telling them to bring the heroin back to Hong Kong.

* The telephone toll records (GX 67) of Wong Chou Shek's residence at 18 Doric Alley show a call placed to Lam's house in Flushing on December 14, 1971.

Then Olsen and Stanley left New York and returned to Bangkok on December 23, 1971. (Tr. 356-364).

12. The *Luna Maersk* and *Lica Maersk* Arrive in New York

The *Luna Maersk*, with John Thomsen and twenty pounds of heroin on board, docked in New York on December 25, 1971. Thomsen had already arranged to sign off the ship, so he had to take the three suitcases off the *Luna Maersk*. He brought the suitcases to the Swedish Seamen's Center and stored them there. Thomsen then signed back on the *Luna Maersk* and left New York for the approximately two-month trip back to Bangkok. (Tr. 1697-1704; GX 36).

Soon after the *Luna Maersk* arrived in New York, so did the *Lica Maersk*. It arrived in New York on January 6, 1972. The seamen on the ship, Erik, had received Olsen's message not to unload the heroin in New York, and he kept the heroin on board and the *Lica Maersk* headed back to Asia, where in Hong Kong, on February 21, 1972, Erik gave Stanley the two suitcases containing the heroin. (Tr. 392-393; GX 36).

13. Stanley Receives More Heroin from Ma, and Stanley and Olsen Send It to Bing Hin Low in Vancouver

Stanley, back in Bangkok, had to rush heroin to Bing Hin Low, who had wanted ten pounds by Christmas. Ma delivered about 30 pounds of heroin to Stanley, which he and Olsen packed into the double-shelled suitcases. Moreover, Stanley still had on hand the fifteen pounds of heroin that John—the seaman on the *Trein Maersk*—had taken as far as Hong Kong and then returned to Bangkok with in November. Stanley and Olsen then arranged to start sending out all this heroin. (Tr. 367-372).

Olsen recruited Arne Andersen, another seaman, to fly the heroin to Vancouver. Just before the New Year, Olsen preceded Andersen to Vancouver to check out the route and the Customs procedures there. Olsen called Stanley from Vancouver and said that the route was fine and that Andersen should come to Vancouver. (Tr. 373-376).

In early January 1972, Andersen took sixteen pounds of heroin to Vancouver, returned to Bangkok, and soon thereafter returned to Vancouver with another sixteen pounds. On both trips, Andersen delivered the heroin to Olsen. Olsen delivered the heroin to Robert Li. (Tr. 376-378).

Olsen and Andersen returned to Bangkok together after Andersen's second trip, and Olsen gave Stanley \$40,500, which Robert Li had given him. (Tr. 378-379).

At this point, events happened very quickly. On January 16, 1972, Stanley went to Hong Kong where the *Thomas Maersk* had returned from New York. There Furu and Gustaffson unloaded the 100 pounds of opium they had been unable to unload in New York, and Stanley delivered the opium to a friend of Ma's in Hong Kong. (Tr. 379-380; GX 36).

Then, on January 29, 1972, Stanley returned to Bangkok and was visited by Bing Hin Low. Stanley introduced Bing to Ma, and later on Bing asked Stanley to send someone to Vancouver to help Robert Li. Stanley asked Charlie, who had been in Bangkok for the last few months helping to send some of the shipments out, to go to Vancouver. (Tr. 381-388, 2041-2042).

Charlie went to Hong Kong where Stanley introduced him to Bing and where Charlie got a Canadian visa, and then he left for Vancouver on February 12, 1972. Just

before Charlie left for Vancouver, he met Olsen at the airport in Hong Kong. Olsen was in transit, on his way to New York. The reason for Olsen's trip to New York at this time was that Olsen had finally received word from John Thomsen that Thomsen had left the three suitcases from the *Luna Maersk* at the Swedish Seamen's Center. Olsen went to New York in the middle of February, 1972 to get those suitcases from the Swedish Seamen's Center and deliver them to Lam. Olsen delivered those three suitcases to Lam who, by this time, had enlisted the Chan brothers and Jimmy Ding in his business, and they brought that heroin to Apartment 4-B at 60 East Broadway in Manhattan. Once this was done, Olsen prepared to return to Bangkok. Lam introduced Olsen to Susan Lum Lee, a travel agent, and they discussed Olsen's flight plans. Olsen was not satisfied with the prices she quoted, and eventually he purchased his air ticket at Lotus Tours in New York City and returned to Bangkok via Vancouver. (Tr. 388-391, 397-398, 828-836, 1238-1253, 1255-1261, 1704-1705, 1829-1837, 2041-2044; GX 42, 93).

14. Victor Leong and Lam Kin Sang Meet in Vancouver

Soon after Olsen left New York in mid-March 1972, Lam received a telephone call from Victor Leong. Leong asked Lam to come to Vancouver to meet a customer that Leong had located. Leong met Lam at the airport in Vancouver and thereafter Lam obtained some samples from Charlie and gave them to Leong. Lam then told Charlie that he wanted more heroin to sell, but Charlie told Lam that Stanley's instructions were that the heroin in Vancouver was for Bing Hin Low only. Consequently, there were no further deals between Lam and Victor Leong, but Leong did bring his potential customer, Paul

Jang, to meet Lam.* Lam then returned to New York. (Tr. 836-841, 2048-2053).

15. Stanley Sends More Heroin to New York and Vancouver

Stanley meanwhile, was busy in Bangkok sending more heroin to New York and Vancouver. He sent Steiner Furu to Vancouver by plane with sixteen pounds of heroin, and Furu arrived in Vancouver on March 1, 1972. Furu delivered that heroin to Charlie, who by that time was working with Robert Li. Then on March 9, Stanley went to Hong Kong, where he met John Thomsen who had previously returned to Bangkok on the *Luna Maersk*, and who was still on the ship on another voyage to New York. In Hong Kong, Stanley gave Thomsen 18 pounds of heroin in two suitcases to bring to New York on the *Luna Maersk*.** Thomsen, on the *Luna Maersk*, left Hong Kong on March 13, 1972, heading for New York. (Tr. 393-400, 415-417, 1704-1716, 2044-2046; GX 36, 92a).

On March 14, 1972, Arne Andersen went to Vancouver with 20 pounds of heroin. Andersen returned to Bangkok from Vancouver with Olsen, Olsen having gone from New York to Vancouver where he checked into the Hotel Biltmore, the same hotel in which Andersen was staying. (Tr. 413-414; GX 92b, 92c).

Stanley next sent Steiner Furu to Vancouver with 20 pounds of heroin. Furu returned about a week later.

* This was the same man that Wong Chou Shek had brought to Lam a few months earlier in Vancouver.

** This was the heroin that Erik, the seaman on the *Lica Maersk*, had returned to Hong Kong with, when, in December, he received Olsen's message not to deliver the heroin in New York. (See p. 18, *supra*).

At this time Olsen recruited another seaman, Bernard Dalan, who agreed to fly twenty pounds of heroin to Vancouver, which he did on April 7, 1972. (Tr. 418-421, 432-433, 2046-2048; GX 92d).

16. The New York Undercover Case

Stanley preceded Bernard Dalan to Vancouver by two days. After Dalan arrived in Vancouver on April 7 with the twenty pounds, Stanley received a telephone call from Lam in New York. Stanley told Lam that a shipment was coming to New York on board the *Luna Maersk* with John Thomsen. Then, in the middle of April, Lam called Stanley and told Stanley that his associates in New York had been arrested: the Chan brothers, Jimmy Ding, and Jimmy Pang, among others. Lam told Stanley to get word to Thomsen not to deliver the heroin. (Tr. 436-438, 843-844).

Lam's associates had been negotiating with a federal narcotics agent for a five pound sale, and on April 11, 1972, they were arrested, and eleven pounds of heroin were seized, six pounds from Apartment 4-B at 60 East Broadway, New York City. This was the heroin that Olsen had picked up at the Swedish Seamen's Center in Brooklyn in February and delivered to Lam (*supra*, p. 20), who was using the Chan brothers, Jimmy Ding and Jimmy Pang to distribute it. (Tr. 1840-1847, 1967-1969, 1974-1986).

17. John Thomsen Stores the *Luna Maersk* Heroin in Brooklyn

After Stanley heard from Lam, Stanley tried to get word to John Thomsen on the *Luna Maersk* not to deliver the heroin that Thomsen was bringing in, and then Stanley returned to Asia. Thomsen arrived in New York

on the *Luna Maersk* on April 19, 1972 and having already signed off the *Luna Maersk*, he had to take the two suitcases off the ship. This time he stored them at the Brooklyn home of a girl friend, Olga Martinsen, where those two suitcases remained until December 24, 1972. Thomsen stayed in New York until early June, when he received a letter from Ernst Olsen with some money and a flight ticket to Bangkok on Japan Airlines. Thomsen left for Bangkok on June 8, 1972 and stayed there until November. (Tr. 438-440, 1716-1734; GX 36).

18. The Last Shipments

On May 19, 1972, Stanley sent his last shipment to North America, this being twenty pounds of heroin that Gustaffson took on board the *Thomas Maersk* in Bangkok. The plan was that when the ship docked in Montreal, Olsen would fly there, meet Gustaffson, and then the two of them would fly to Vancouver with the heroin. (Tr. 443-445; GX 36).

After the *Thomas Maersk* left Bangkok in May, Stanley sent one last shipment from Bangkok, this one to Taiwan. His associates in Taiwan were arrested in August, causing Stanley to decide to lay low for a while, and he moved to the Thai-Burma border. (Tr. 445, 448-450).

Before that, in July, 1972, Olsen left Bangkok for Montreal. He met Gustaffson there after the ship docked on July 19, and the two of them flew to Vancouver where they delivered the heroin to Charlie. That was the last delivery of heroin in North America from the Bangkok connection. (Tr. 445-448, 2050-2051; GX 36).

19. The New York 18-Pound Seizure

By December, 1972, Stanley felt compelled to offer his cooperation to the American authorities in Bangkok.* The first thing he did was to come to New York and meet with John Thomsen on December 24, 1972.** Stanley asked Thomsen to retrieve the 18 pounds of heroin which Thomsen had stored the previous April after his second trip to New York on the *Luna Maersk* (see pp. 22-23, *supra*). Thomsen went to Olga Martinsen's apartment, retrieved the two suitcases containing the 18 pounds, and entered a taxi with Stanley, at which time the taxi driver and other agents arrested Thomsen *** and seized the heroin. (Tr. 450-461, 1734-1737, 1986-1989).

B. The Defense Case

Except for the offer of a few exhibits, the defendants did not present a case. (Tr. 2101-2119).

ARGUMENT

POINT I

The proof at trial showed the existence of a single conspiracy.

Victor Leong and Wong Chou Shek allege that the Government's proof demonstrated the existence of an unspecified number of separate conspiracies, rather than the

* Stanley testified that he felt that Ma Ssu Ts'ung was going to turn him in to the Thai authorities. Stanley concluded that he would receive more just treatment from the American authorities, and he offered to cooperate, in return for which he was promised that nothing that he told the agents would be held against him if he was completely truthful and forthright, and that he would not be prosecuted.

** Thomsen had just arrived in New York on the *Cecilia Maersk*.

*** Thomsen was convicted in the Eastern District of New York and sentenced to 12 years' imprisonment. He testified for the Government at the trial below.

single one charged in the indictment. In contrast, however, the jury's finding of a single conspiracy, pursuant to instructions which were correct and unobjected to below, was entirely proper.

The proof at trial demonstrated a classic single conspiracy to traffick in narcotics, in which the full gamut of participants was identified, ranging from the source of the heroin in Bangkok; his associate who found North American distributors; the smugglers who actually brought the heroin from Bangkok to the United States and Canada; the distributors in New York, San Francisco, and Vancouver; the associates and couriers for these distributors; and ultimately the distributors' customers. All twenty-five defendants indicted, plus the fifteen co-conspirators, fitted within one of the above categories. With respect to the four defendants who went to trial, Ernst Olsen was the chief smuggler; Wong Chou Shek was the San Francisco distributor; Louie Yiu Che was a San Francisco customer; and Victor Leong was a customer of the New York distributor (Lam Kin Sang), who himself had aspirations of being a distributor in Vancouver. They were all part of one organization, the purpose of which was to traffick in narcotics.

This case is totally unlike the facts depicted in *United States v. Bertolotti*, Dkt. No. 75-1107 (2d Cir. November 10, 1975), so heavily relied on by Leong and Wong Chou. In *Bertolotti*, this Court found that although the indictment had charged a single conspiracy, the proof had established at least four separate, distinct and unrelated narcotics and quasi-narcotics ventures (some of which were in reality cash and narcotics rip-offs), only one of which "resembled the orthodox business operation we found to exist in narcotics conspiracies." Slip op. at 6418. The Court further found that the transactions "could hardly be attributed to any real organization, even a loose-knit one," and that there was no evidence which revealed "what could seriously be called 'a regular business on a steady basis.'" Slip op. at 6419. It con-

cluded that reversal was required because of the risk that the appellants therein had been prejudiced by the spillover of proof of those conspiracies with which they had had no connection.

In contrast, the trial below demonstrated the existence of one well-organized business operation, the purpose of which was to import massive quantities of pure heroin into the United States and Canada where it would be distributed. With such a factual pattern, this Court on numerous occasions has affirmed a jury's finding that the proof established the single conspiracy charged. *United States v. Ortega-Alvarez*, 506 F.2d 455, 457 (2d Cir. 1974), *cert. denied*, 421 U.S. 910 (1975); *United States v. Arroyo*, 494 F.2d 1316, 1319 (2d Cir.), *cert. denied*, 419 U.S. 827 (1974); *United States v. Bynum*, 485 F.2d 490 (2d Cir. 1973), *vacated and remanded on other grounds*, 417 U.S. 903 (1974); *United States v. Agueci*, 310 F.2d 817 (2d Cir. 1962), *cert. denied*, 372 U.S. 959 (1963). Indeed, this Circuit has found a single conspiracy in cases with far less compelling fact patterns than here. *E.g.*, *United States v. Tramunti*, 513 F.2d 1067 (2d Cir.), *cert. denied*, — U.S. —, 44 U.S.L.W. 3201 (Oct. 6, 1975); *United States v. Mallah*, 503 F.2d 971 (2d Cir. 1974), *cert. denied*, 420 U.S. 995 (1975).

In conjunction with their multiple conspiracy arguments, Leong and Wong Chou point to the Vancouver transactions, asserting that they were a part of a wholly separate conspiracy totally unrelated to their narcotics activities in what they call the United States conspiracy. The claims are both factually and legally in error.

First, it is undisputed that the Vancouver conspirators, Charlie, Bing Hin Low, Tony Wong, and Robert Li, were large-scale distributors who received their merchandise from the same Asian source, through the same smuggling

network, and at about the same time as did Wong Chou and Leong.

Second, viewed even superficially, the New York and Vancouver operations were not unrelated. The first shipment of heroin (five pounds) to reach Bing in Vancouver was part of the *Thomas Maersk* cargo delivered to Olsen, Stanley and Lam in New York, and then taken by Olsen to Vancouver where it was distributed.

Third, both Leong and Wong Chou were aware, to some extent, of the Vancouver aspect of this conspiracy, though not necessarily of the direct Bangkok to Vancouver shipments. Wong Chou had a customer (Paul Jang) in Vancouver, and in December 1971 he had the New York wholesale distributor, Lam, come to Vancouver. Wong Chou introduced Lam to Paul Jang and, thereafter, Lam caused three and one-half pounds of heroin to be delivered to Jang. Stanley, Robert Li and Johnny Chau, of the Vancouver organization, were utilized in this transaction.

As to Leong, the evidence made clear that he desired to participate in the distribution of this Asian heroin in Vancouver by himself becoming a distributor of the heroin in that city, with Lam as his supplier. Accordingly, although he made but a single purchase of one-half pound of heroin from Lam, he told Lam of his intentions to purchase more heroin from the latter and to distribute the same in Vancouver. Additionally, Leong actually caused Lam to come to Vancouver in an attempt to get Lam to establish a heroin connection with Paul Jang, a customer that Leong had located there. However, because Stanley had instructed Charlie that all heroin supplied to Vancouver was to be sold to the Bing organization, Lam was unable to establish such a connection for Jang. Lam did, however, supply Jang with

a sample of the Asian heroin provided by Charlie. From the proof of Leong's unsuccessful attempt to establish himself as a Vancouver distributor, the jury could properly have inferred that Leong specifically understood that the distribution in Vancouver of this Asian heroin was someone else's exclusive domain.*

Finally, in addition to the actual association both Wong Chou and Leong had with Vancouver and the distribution of heroin there,

"It is firmly settled in this Circuit that when large quantities of heroin are being distributed, each major buyer must be presumed to know that he is part of a wide-ranging venture, the success of which depends on the performance of others whose identities he may not even know."

United States v. Ortega-Alvarez, supra, 506 F.2d at 457. That presumption is fully applicable to both Wong Chou, who purchased from Lam on numerous occasions a total of approximately 19 pounds of pure heroin, and to Leong, whose single one-half pound purchase was accompanied by his knowledge of Lam's capacity to deliver more and larger quantities of heroin and Leong's stated intention to avail himself of that source.

Leong's current claim that Judge Ward's instructions on the issue of multiple conspiracies constituted an im-

* In light of the evidence recited in the text, Leong's contention, premised on the single act or isolated transaction doctrine, *United States v. De Noia*, 451 F.2d 979, 981 (2d Cir. 1971), that the evidence of his alleged participation in the conspiracy is insufficient because limited to a single purchase of one-half pound of heroin is frivolous. It simply ignores what the jury could properly have found was his actual knowledge of the larger scope of the conspiracy, his stated intention to purchase more heroin from Lam and distribute it in Vancouver, and ignores his efforts to establish himself as a Vancouver distributor.

permissible "all or nothing charge" is frivolous. This Court only recently found wholly proper a charge of Judge Ward's virtually identical to that challenged here. *United States v. Cohen*, 518 F.2d 727, 735 (2d Cir.), *cert. denied*, — U.S. — (1975). Moreover, neither Leong nor any of the other defendants objected to the instructions given and, accordingly, have waived that alleged claim of error. *United States v. Ingenito*, Dkt. No. 75-1312 (2d Cir. March 16, 1976), slip op. at 2689-90.

Leong and Wong Chou further claim, without merit, that their comparatively "limited" participation was blotted out by the Government's proof of the "global" conspiracy, and that had they been tried alone, without the spillover effect of the other evidence unconnected to them, they stood a reasonable chance of being acquitted. The argument is basically one for a severance. It ignores the fact that the court specifically instructed the jury to consider each defendant individually and the evidence against them separately (Tr. 2291, 2292, 2302-2303, 2331, 2334), and that, indeed, that is what the jury did, as evidenced by its inquiries during deliberations. (See jury's notes marked as court exhibits, Tr. 2368, 2369, 2377, 2385, 2387 regarding Leong, and Tr. 2353, 2385, 2389 regarding Wong Chou). Their argument also ignores the fact that Louie Yiu Che, who presumably was affected as much by the alleged spillover problem as the other defendants, was acquitted.* They have failed to show any substantial prejudice. Merely alleging that one has a better chance for acquittal in separate trials is insufficient to entitle Leong and Wong Chou to any relief. *United States v. Calabro*, 467 F.2d 973 (2d Cir. 1972),

* Wong Chou Shek's argument does not even have any surface appeal. The fact that, as the San Francisco distributor, he was responsible for the sale of at least 19 pounds of pure heroin can hardly be viewed as "limited participation."

cert. denied, 410 U.S. 926 (1973); *United States v. Fantuzzi*, 463 F.2d 683 (2d Cir. 1972); *United States v. Borelli*, 435 F.2d 500 (2d Cir. 1970), *cert. denied*, 401 U.S. 946 (1971).

Leong complains that the Government proved its case too well by the use of cumulative evidence, and therefore deprived him of a fair trial. The complaint warrants no relief. Leong's reliance on *Shepard v. United States*, 290 U.S. 96, 105 (1933), which pertains to evidence which, though admissible, *confuses* a jury is misplaced. Leong has not pointed to any evidence at trial which could have confused the jury as to what each defendant's role was in the conspiracy. Indeed, in its deliberations, as previously noted, the jury specifically and seemingly very carefully considered each defendant separately and sifted the evidence as it pertained to each.*

* Moreover, during the opening statement of the Government, a chart was exhibited to the jury which placed each defendant in his proper place in the conspiracy (GX 1 for identification; see Addendum 1). This chart was also utilized during summations, as were 13 individual charts which specified the active participants in each of the 13 transactions proved at trial. (GX 94-106 for identification). Lastly, to avoid confusion and pursuant to the jury's request, a list of names was distributed to the jury which identified each defendant and co-conspirator with a particular locality. (GX 19 for identification; see Tr. 140-147, 174-176, and Addendum 2).

POINT II

Olsen's prosecution did not constitute double jeopardy.

Olsen claims that his conviction below was his second conviction for the same crime, and therefore it should be reversed on the grounds of double jeopardy.* Like

* Even if there were any merit to Olsen's double jeopardy claim, it would in no way effect Olsen's convictions in this District on the three substantive counts. *United States v. Nathan*, 476 F.2d 456 (2d Cir.) *cert. denied*, 414 U.S. 823 (1973). Olsen attempts to avoid this fact by claiming that since there was evidence introduced in his Eastern District trial about the transactions underlying the three substantive counts charged here, collateral estoppel should act as a bar to his being tried on those substantive counts, citing *Ashe v. Swenson*, 397 U.S. 436 (1970).

Olsen's claim totally misconstrues the concept of collateral estoppel. Collateral estoppel precludes "prosecution of an offense when an issue of ultimate fact or an element essential to conviction has necessarily been determined in favor of the defendant by a valid and final judgment in a prior proceeding between the same parties." *United States v. Cala*, 521 F.2d 605, 607-608 (2d Cir. 1975). In Olsen's Eastern District trial, there was very brief testimony by Stanley and Lam concerning these transactions (E. Tr. 59-60, 69-74, 317-323). Such testimony was admitted by Judge Mishler solely as subsequent similar acts (E. Tr. 60-66), and therefore could not have been an essential element in the jury's determination. In any event, by virtue of Olsen's conviction in the Eastern District, it is clear that it is impossible to speculate that the jury determined anything in Olsen's favor.

Since there is no real challenge to Olsen's convictions on Counts 2, 11 and 14, and since Judge Ward imposed 15 year sentences on these counts concurrently with the 15 year sentence imposed on Count 1, this Court may, in its discretion, decline to review the sole issue raised by Olsen on this appeal since it only pertains to Count 1 and affirm his conviction. *Barnes v. United States*, 412 U.S. 837, 848 n. 13 (1973); *United States v. Neville*, 516 F.2d 1302, 1307 n.6 (8th Cir. 1975); *United States*

[Footnote continued on following page]

other multiple narcotic offenders before him, Olsen's claim echoes a frequently heard but rarely successful allegation. Compare, *United States v. Papa*, Dkt. No. 75-1208 (2d Cir. April 2, 1976); *United States v. Bommarito*, 524 F.2d 140, 145-146 (2d Cir. 1975); *United States v. Ortega-Alvarez*, *supra*; *United States v. McCall*, 489 F.2d 359 (2d Cir. 1973), *cert. denied*, 419 U.S. 849 (1974); *United States v. Pacelli*, 470 F.2d 67 (2d Cir. 1972), *cert. denied*, 410 U.S. 983 (1973); *United States v. Aviles*, 274 F.2d 179 (2d Cir.), *cert. denied as Gennovese v. United States*, 362 U.S. 974 (1960) (double jeopardy claim rejected); with *United States v. Mallah*, 503 F.2d 971 (2d Cir. 1974), *cert. denied*, 420 U.S. 995 (1975) (claim of double jeopardy successfully raised). See also, *United States v. Edwards*, 366 F.2d 853 (2d Cir. 1966), *cert. denied as Jakob v. United States*, 386 U.S. 908 (1967) (claim of former jeopardy rejected in case involving sale of stolen securities).

The general principles applicable to determining such a claim have been clearly articulated in prior cases.

Double jeopardy may be invoked successfully as a bar to prosecution or to vacate a judgment of conviction only if an appellant establishes that a prior prosecution was identical in law and in fact. *United States v. Cala*, 521 F.2d 605, 607 (2d Cir. 1975); *United States v. McCall*, *supra*, 489 F.2d at 362-363; *United States v. Cioffi*, 487 F.2d 492, 496 (2d Cir. 1973), *cert. denied as Ciuzio v. United States*, 416 U.S. 995 (1974); *United States v. Nathan*, 476 F.2d 456 (2d Cir.), *cert. denied*, 414 U.S. 823 (1973); *United States v. Pacelli*, *supra*, 470 F.2d

v. Keller, 512 F.2d 182, 185 n.8 (3d Cir. 1975); *United States v. Bath*, 504 F.2d 456, 457 (10th Cir. 1974); *Ethridge v. United States*, 494 F.2d 351 (6th Cir.), *cert. denied*, 419 U.S. 1025 (1974); *United States v. McLeod*, 493 F.2d 1186, 1189 n.1 (7th Cir. 1974).

at 72; *United States v. Edwards, supra*; *United States v. Aviles, supra*; *United States v. Kramer*, 289 F.2d 909, 913 (2d Cir. 1961). However, especially in narcotics conspiracy cases, this Court has modified a defendant's burden of proof when raising former jeopardy, by ruling that "once a defendant introduces sufficient evidence that the two conspiracies alleged were in fact one, the burden shifts to the Government to rebut the inference of unity." *United States v. Papa, supra*, slip op. at 2987. Accord, *United States v. Mallah, supra*, 503 F.2d at 987. The court below, after comparing the entire record of the Eastern District of New York prosecution, which Olsen claims constituted the former jeopardy, with the record of the case just prosecuted in the Southern District of New York, found that "the conspiracies were factually different in terms of principals, source of the drugs, the locations and the time periods and accordingly defendant's claim of double jeopardy and collateral estoppel must fail." (S. Tr. 16).^{*} These findings, which were correct and in no event clearly erroneous, should be affirmed.

On October 9, 1974, in the Eastern District of New York, Indictment 74 Cr. 627 was filed, charging Ernst Olsen, along with 14 other defendants, with conspiring between January 1, 1969 and June 30, 1970 to import into the United States, and here distribute, quantities of heroin and opium, in violation of Title 21, United States Code, Sections 173 and 174. Olsen was also charged in two substantive counts with importing into the United States five kilograms of heroin and ten kilograms of opium in January, 1970, in violation of the same sections of law.

^{*} "S.Tr." refers to the sentencing transcript of Ernst Olsen on December 16, 1975.

On March 5, 1975, in the Southern District of New York, Indictment 75 Cr. 229 was filed,* charging Ernst Olsen and 24 other defendants with conspiring between May 1, 1971 and the date of the filing of the indictment to import heroin into the United States, and to distribute the heroin in the United States, in violation of Title 21, United States Code, Sections 846 and 963. Counts Two, Eleven and Fourteen, respectively, charged Olsen with the substantive violations of possessing with the intent to distribute 5.25 kilograms of heroin on August 26, 1971, 3.5 kilograms of heroin on December 3, 1971, and 9.45 kilograms of heroin on March 8, 1972, in violation of Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).

On April 10, 1975, Olsen was convicted in the Eastern District of New York on all counts of Indictment 74 Cr. 627 in which he was named, and thereafter sentenced to five years' imprisonment. His conviction was affirmed from the bench by this Court on October 16, 1975.**

On October 20, 1975, Olsen was convicted in the Southern District of New York on all counts of Indictment 75 Cr. 229 in which he was named, and thereafter sentenced to concurrent terms of 15 years' imprisonment.***

* The instant indictment superseded Indictments 74 Cr. 887 and 75 Cr. 162, filed on September 18, 1974 and February 19, 1975, respectively.

** Docket No. 75-1270.

*** Olsen refers to another indictment (74 Cr. 954) pending before Judge Cannella which covers a narcotics transaction involving Olsen and Stanley, and other different conspirators, in 1968 and 1969, claiming that this is also part of this one overall conspiracy extending from 1968 through 1972. Since Olsen has not been prosecuted on this indictment, it bears no relevancy to the issue raised by Olsen, and there is no reason to compare its facts with those in the two other cases. *United States ex rel. DiGiangiemo v. Regan*, 528 F.2d 1262, 1265 (2d Cir. 1975).

The Eastern District conspiracy

The proof at the Eastern District trial showed that in January, 1969, Wong Shing Kong ("Stanley") received ten pounds of opium from Wong Sun Yee in Singapore. Stanley brought the opium to the United States in March or April, 1969 on board the *Nicoline Maersk*. George Sun introduced Stanley to Cheng Kam Cheung, who purchased the ten pounds of opium, which were unloaded off the ship by Stanley and another seaman named Per Hansen. Stanley thereafter returned to Hong Kong, where he received a letter from George Sun asking for more drugs, and a letter from Ernst Olsen asking if there were any business deals going on. In or about August, 1969, Yeung Tak introduced Stanley to Chang Keng Fai, who was willing to supply heroin. In November, 1969, Stanley asked Olsen if Olsen would be interested in helping him load heroin aboard a ship in Malaysia, and sell it in the United States; Olsen agreed, and said that if more people would be needed, he would recruit them. Thereafter, heroin and opium were loaded onto the *Lexa Maersk* in Bangkok, hidden in Olsen's cabin (Chang Keng Fai wanted to do this in Malaysia, but the *Lexa Maersk* did not stop there). Olsen brought additional heroin on board in Manila (supplied by Ngau Sau Tung); finally, the *Lexa Maersk* docked in Brooklyn in January, 1970, and Olsen removed the heroin and opium from the ship, and delivered the narcotics to Stanley at the home of George Sun. Stanley did not pay Olsen for his services at that time, telling him that when customers were found, Olsen would be paid. Stanley, George Sun and Lam Kin Sang then sold the heroin and opium to Cheng Kam Cheung, Lee Louie, Jean Lui, and Hom Git. Olsen, who had continued on to Baltimore on the *Lexa Maersk*, returned to New York, where Stanley paid him \$3,000. Stanley returned to Hong Kong in March,

1970. (E. Tr. 26-58, 294-306, 309-314).^{*} That was the end of the conspiracy proved at the trial in the Eastern District of New York.

The Southern District conspiracy

Stanley was thereafter inactive in the drug business until the summer of 1971, over a year later, at which time his shipmate, Sze Chun Kam ("Charlie") introduced him to Ma Ssu Ts'ung in Bangkok, and the events which were the subject of the instant case thereafter ensued.

Olsen's involvement in the new conspiracy began immediately after the abortive attempt to load the heroin and opium on board the *Clifford Maersk*: among other things, Olsen stored those narcotics in the Mariner's Club in Bangkok; he went to Japan for two months to try to sign on a ship; he returned to Bangkok in August, 1971, at which time he flew to New York with two suitcases of heroin; he returned to Bangkok where he recruited a number of other seamen to smuggle enormous quantities of heroin into the United States and Canada; he made a second trip to New York to await the arrival of the ships; he brought seven and one-half pounds of heroin from New York to Vancouver; and, back in Bangkok again, he recruited more seamen to bring still larger quantities of heroin to the United States and Canada.

The cast of characters and their roles in this conspiracy were: Ma Ssu Ts'ung and Tony Ma, the Bangkok suppliers; Olsen, the chief smuggler who recruited all the other seamen; Lam Kin Sang, the New York distributor, Wong Chou Shek, the San Francisco distributor, and Bing Hin Low, Tony Wong and Robert Li, the Van-

^{*} "E. Tr." refers to the transcript of the Eastern District of New York trial.

couver distributors; the customers included Lee Louie, Victor Leong, Eng Fong, Lam Shing, Wee Sik Moy, George Kay Lew, Louie Yiu Che and Paul Jang; and the workers and associates who helped the above were the Chan brothers, Jimmy Ding, Jimmy Pang, Pon You Wing and Johnny Chau. The time period of this conspiracy was from approximately May, 1971 through August, 1972, when Stanley left Bangkok for the Thai-Burma border.

Comparison of the two conspiracies

The transactions underlying each conspiracy were totally separate and distinct, and most of the participants were different.* The suppliers in Asia were different (Ma Ssu Ts'ung and Tony Ma vis-a-vis Wong Sun Yee, Chang Keng Fai and Ngau Sau Tung); the smugglers were different, except, of course, for Ernst Olsen (Steiner Furu, Connie Gustaffson, Arne Andersen, Erik Hansen, John Christiansen, John Thomsen and Bernard Dalan vis-a-vis Lennart Bo Holmgren, Kjeld V. Keogh and Per Hansen); the distributors in North America were different (Lam Kin Sang, Wong Chou Shek and Bing Hin Low vis-a-vis George Sun **); and the customers, except for Lee Louie, were different (Victor Leong, George Kay Lew, Paul Jang, et al. vis-a-vis Cheng Kam Cheung). Moreover, there were additional co-conspirators who existed

* In the comparisons which follow, the names, places and times shown in the Southern District trial appear first, to be contrasted with those shown in the Eastern District trial.

** Lam Kin Sang, to a limited degree, was also a distributor, though that was not Stanley's original plan. George Sun was the distributor, but when Stanley was in New York while George Sun was distributing the heroin, Stanley ran into Lam, who had once been a merchant seaman with Stanley, and Stanley thereupon asked Lam to find some customers. Lam did so, disposing of some of the heroin stored at George Sun's house. (E. Tr. 51-58).

in the instant case and who were not present in the Eastern District case: Lam Kin Sang's New York associates; Wong Chou Shek's San Francisco associates; Bing Hin Low's Vancouver associates. The heroin and opium came from different places (Bangkok vis-a-vis Singapore, Malaysia and Manila) and were sold in different places (New York, San Francisco, and Vancouver vis-a-vis only New York). The time periods were different (June, 1971-August, 1972 vis-a-vis January, 1969-June, 1970).

Discussion

The criteria for determining the existence of double jeopardy in conspiracy cases were clearly set forth in *United States v. Mallah, supra*, 503 F.2d at 986:

"[W]hether there is any difference . . . with respect to such key factors as the 'principals, the source of their drugs, the means and places of importation, their distribution points, and the centers from which they operate. . . .' [*United States v. Aviles*], 274 F.2d at 194."

See also, *United States v. Bertolotti*, Dkt. No. 75-1107 (2d Cir. November 10, 1975); *United States v. Miley*, 513 F.2d 1191, 1205-1207 (2d Cir.), *cert. denied*, — U.S. — (1975).

A. Olsen's Burden

As previously stated, Olsen has the initial burden of going forward, to show that the two conspiracies charged were in fact one. *United States v. Papa, supra*; *United States v. Mallah, supra*. Olsen has not satisfied his burden.

In *Mallah*, the Court ruled that the appellant Pacelli had satisfied his burden of going forward by showing an

identity of time, location, and the likelihood that the organization defined in one conspiracy (Pacelli, the "foot soldiers" and others to the Grand Jury unknown) was in reality subsumed by the larger organization defined in the other conspiracy, *United States v. Papa, supra*, slip op. 2987-88. Accordingly, in *Mallah*, the burden shifted to the Government to rebut the presumption of a single conspiracy. 503 F.2d at 985-986.

Olsen has failed to make the showing that appellant Pacelli made in *Mallah*. All that Olsen has demonstrated is that four individuals involved in the Eastern District conspiracy were also involved in the Southern District conspiracy (Olsen, Stanley, Lam and Lee Louie). He has failed to show an identity of most of the material factors considered essential by the *Mallah* Court, such as the source of the narcotics, the means and places of importation, the distribution points, the centers of operation, both overseas and domestic, and the time periods involved. In addition, most of the principals were different (sources, smugglers, distributors, and customers) and there were no unidentified co-conspirators as existed in *Mallah*. Lastly, the scope of each conspiracy differed vastly. Whereas the Eastern District conspiracy envisioned a one-shipment transaction which expanded to a second shipment pursuant to George Sun's request (the latter shipment involving Olsen), and then terminated in early 1970, the Southern District conspiracy was initiated by Charlie's introduction of Stanley to Ma over a year later and the commencement of a massive, ongoing conspiracy encompassing 13 separate shipments to North America, terminating in August, 1972.

Accordingly, the Government submits that Olsen did not satisfy his burden under *Mallah*, and therefore no

presumption of a single conspiracy exists for the Government to rebut.*

Assuming *arguendo* that Olsen satisfied his burden by merely showing the identity of four conspirators, the Government did rebut the presumption of a single conspiracy, and the records of the two trials clearly bear out the existence of two separate and distinct conspiracies.

B. Separate conspiracies

As previously demonstrated, the conspiracies were factually different with respect to most of the principals, the source of the drugs, the locations and the time periods involved (*supra*, pp. 37-38). The conspiracies were both independent, free-standing, self-sufficient entities. They differed in the magnitude of the narcotics smuggled, and were conducted over successive periods of time separated from each other by over a year, with full participation at each level of distribution from source to lower level retailer and consumer.** Each organization had different participants, different distribution points and different centers of operation. *United States v. Papa, supra*, slip op. 2988-89; *United States v. Mallah, supra*, 503 F.2d at 986; *United States v. Aviles, supra*, 274 F.2d at 194.

* Olsen observes that the Court below denied his motion without a hearing. No hearing was necessary in view of the very extensive records generated by both trials, which the court reviewed. This included not only the indictments and trial transcripts, but the massive 3500 material pertaining to Stanley and Lam generated by both trials. In connection with his motion, Olsen's attorney submitted those 3500 exhibits from both trials, which he presumably deemed helpful. (Tr. 2107-2110, 2116-2118).

** Accordingly, the contingency toward which the *Mallah* opinion was directed—that the one smaller conspiracy of mainly "foot soldiers" joined with Pacelli was in reality a part of the larger Pacelli conspiracy—is not present here.

Olsen's main point is that despite all these dissimilarities, there was still only one conspiracy between Stanley and Olsen from 1968 through 1972 wherein Stanley would obtain narcotics and find distributors and Olsen would arrange for the deliveries.*

The record, however, reveals the inaccuracy of that contention. The record reveals separate and temporally distinct agreements entered into between Olsen and Stanley, agreements which in the Eastern District case covered one shipment and payment therefor and in the Southern District case covered a multitude of shipments.

Stanley and Olsen's agreement in the Eastern District conspiracy was limited, and not reflective of any ongoing arrangement since 1968 as now claimed by Olsen:

"Q. Did there come a time during this period [November, 1969] that you met with Mr. Ernst Olsen?

"A. Yes.

* * * * *

"Q. Would you tell us the conversation that you had with Mr. Olsen at this time?

"A. I told him there are buyers in the United States and there is connection to have the goods put aboard in Malaysia and *would he be interested in doing business together.*

"Q. What if anything did he say?

"A. He agreed that he is interested. I said if we want to do this, we need more people to work together.

* Acceptance of Olsen's argument would mean that once two people agree to traffick in narcotics, regardless of how limited the scope of the agreement, how far removed in time and location is each separate transaction, how distinct in terms of participants is each future transaction, that those two people are forever bound in just one conspiracy.

"Q. What if anything did he say?

"A. He said he will look for some people."
(E. Tr. 37-38; emphasis ours).

Their agreement involved importing Chang Keng Fai and Ngau Sau Tung's narcotics to the United States, there to be distributed by George Sun (and, as unexpectedly happened, Lam Kin Sang). It encompassed that one shipment for which Stanley paid Olsen \$3,000.* Once done, the terms of their agreement were satisfied.

After that shipment arrived in New York, was distributed, and Olsen was paid, Stanley returned to Hong Kong in March, 1970, not to be involved in narcotics shipments until June, 1971, when he met Ma. (E. Tr. 175-179).

After arranging the terms of supply with Ma, Stanley met with Olsen, who was vacationing in Bangkok. Stanley told Olsen about his new source, and Olsen agreed to help Stanley in getting the narcotics to the United States. There is absolutely no indication that this was a continuation of an agreement entered into years earlier. Rather, it was the start of a new agreement between two narcotic traffickers who had dealt together in the past.

The two indictments here involved are not the product of an abuse of prosecutorial discretion in "carving one larger conspiracy into smaller separate agreements."

* Similarly, the documents submitted by Olsen to the court below in support of his motion reveal the limited nature of Olsen and Stanley's agreement. For example, one of the documents was Stanley's 42-page debriefing report, marked as 3501A in the Southern District trial. On page 9 thereof is the following:

"Also at this time the informant [Stanley] learned that Ernst Olsen had come to Hong Kong onboard the *Lexa Maersk*. He contacted Ernst Olsen and asked if he would take a shipment of narcotics to New York in return for a \$3,000 courier fee. Olsen agreed to the proposition...."

United States v. Mallah, supra, 503 F.2d at 985. Rather, the two indictments accurately reflect the fact that Stanley and Olsen had a limited agreement relating to one shipment in 1970 which involved a clearly-defined organization, and that they then entered into another agreement in 1971 relating to many shipments which involved another clearly-defined organization, separate and distinct from the earlier one. The factual pattern revealed by the records of both proceedings clearly supports the District Court's finding that the two conspiracies here involved were separate and distinct, and that finding should be affirmed.* *United States v. Papa, supra*; *United States v. Mallah, supra*; *United States v. McCall, supra*; *United States v. Edwards, supra*; *United States v. Aviles, supra*.

POINT III

There was sufficient evidence of venue to support Leong's conviction on Count Six.

Leong claims that there was insufficient evidence to establish venue in the Southern District of New York of the substantive offense of which he was convicted.**

* Indeed, a ruling that these two conspiracies were identical would call into question the vitality of this Court's pronouncements in *United States v. Sperling*, 506 F.2d 1323, 1340-1341 (2d Cir. 1974), *cert. denied*, 420 U.S. 962 (1975) and *United States v. Miley, supra*.

** Leong's claim that the indictment must be dismissed as to him should he succeed on his venue claim is utterly frivolous. Leong was convicted of both the conspiracy and substantive counts. Even assuming *arguendo* that the latter were to fall, his conviction for conspiracy would be unaffected. It is settled that proof of a narcotics conspiracy premised on 21 U.S.C. § 846 does not require proof of any overt act, *United States v. Bermudez*, 526 F.2d 89, 94 (2d Cir. 1975), and that even if it did, proof of any one of the alleged overt acts within the District by any conspirator would suffice to meet any venue requirement. Here, of course, there were a multitude of such acts in this District.

Leong was charged in Count Six of the indictment with possessing with intent to distribute 250 grams (one-half pound) of heroin in the Southern District of New York on or about September 16, 1971. The jury, in the course of its deliberations, requested the date and place of the transaction charged in Count Six. (Tr. 2369-2370). In trying to comply with the jury's request, Leong's counsel and the prosecutor reviewed the record, after which Leong's counsel moved for a judgment of acquittal on that count on the ground that the Government failed to prove that the transaction had occurred in the Southern District of New York. Judge Ward reserved decision, and the jury returned a guilty verdict. At the time of Leong's sentencing, Judge Ward denied the motion on the merits and on the further ground that the claim had been untimely made and therefore waived. (S. Tr. 22-24).^{*} Judge Ward's findings were clearly correct.

Contrary to Leong's current claim, it is settled that the Government need only prove venue by a preponderance of the evidence, not beyond a reasonable doubt. *United States v. Jenkins*, 510 F.2d 495, 497-498 (2d Cir. 1975). Viewed by that standard, and in light of the fact that venue can be established by circumstantial evidence, the Government clearly satisfied its burden. *United States v. Jenkins*, *supra*; *United States v. Haley*, 500 F.2d 302, 305 (8th Cir. 1974); *Cauley v. United States*, 355 F.2d 175, 176 (5th Cir.), *cert. denied*, 384 U.S. 951 (1966); *Holdridge v. United States*, 282 F.2d 302, 305 (8th Cir. 1960) (Blackmun, J.).

Proof of the offense charged in Count Six was adduced through Lam Kin Sang, the New York distributor, who in mid-September 1971 had sold the heroin to Leong

^{*} "S. Tr." refers to the transcript of Leong's sentencing on December 16, 1975.

which gave rise to the offense. While admittedly the prosecutor failed to ask Lam precisely where the transfer of the heroin to Leong had occurred, there was ample evidence from which the jury could properly have concluded that it had taken place at the Tung On gambling house in Manhattan.

Lam Kin Sang testified that all his early sales of heroin took place in clubs in the Southern District of New York (three one-pound sales to Lee Louie), that he met Victor Leong in the Tung On gambling club in Manhattan in mid-September, at which time they agreed that Lam would sell one-half pound of heroin to Leong for \$2,000, that shortly thereafter Lam transferred to Leong the promised heroin, and that throughout this approximately two-week period, Leong was a resident of the George Washington Hotel in Manhattan. (Tr. 758-762). The foregoing, we respectfully submit, was sufficient circumstantial evidence to permit the jury to find by a fair preponderance that Leong actually received the heroin in the Manhattan gambling club. Moreover, the fact that Leong was staying in a hotel in Manhattan throughout this period of time during which he received the heroin is evidence sufficient to permit a finding that Leong possessed the heroin while at the hotel after he received it from Lam, even if he had received it somewhere else.

Moreover, Leong waived his venue objection. The trial court properly so found. (S. Tr 23-24). This Circuit and others have ruled that any venue objection is waived "when, after the Government has concluded its case, the defendant specifies grounds for acquittal but is silent as to venue." *United States v. Price*, 447 F.2d 23, 27 (2d Cir.), cert. denied, 414 U.S. 912 (1971). See also *Gilbert v. United States*, 359 F.2d 285 (9th Cir.), cert. denied, 385 U.S. 882 (1966); *United States v. Polin*, 323

F.2d 549 (3d Cir. 1963). In the instant case, as in *Price*, Leong moved for a directed judgment of acquittal on the grounds of insufficiency of the evidence when the Government rested its case. He specified as his grounds that the evidence "was insufficient to submit the case to the jury, and that the mind of no reasonable juror could conclude guilt beyond a reasonable doubt on the case the Government has presented." (Tr. 2095-96). In *Price*, the defendant was a bit more specific, in that he enumerated the conspiracy count and substantive count in arguing insufficiency of the evidence. Leong renewed his motion at the close of all the evidence (Tr. 2121)—as also occurred in *Price* (the verdict was "contrary to law, contrary to the evidence, and contrary to the weight of the evidence," 447 F.2d at 27)—but did not specify venue as one of the grounds. Accordingly, Leong waived any venue objection. *Price, supra*, 447 F.2d at 28.

POINT IV

The trial court correctly denied Leong's post-trial request for a hearing to determine if Lam's testimony against him was the tainted fruit of unlawful seizures from Leong by Canadian authorities and therefore required to be suppressed.

At the trial, the Government sought to introduce into evidence certain documents, most notably a personal telephone book, seized by the Royal Canadian Mounted Police from Victor Leong in Vancouver on June 10, 1972. A suppression hearing was conducted, and the seizing officer, Harry Wallace of the Royal Canadian Mounted Police, testified about the circumstances of the seizure.

On April 24, 1972, Wallace and Constable Chan searched Victor Leong's hotel room in Vancouver. This search was conducted under the authority of the Canadian

Narcotic Control Act, and the officers were in possession of a writ of assistance.* The officers seized some photographs and installed a listening device.** On June 10, 1972, again acting pursuant to the writ of assistance, Wallace and Chan returned to Leong's hotel room, found him there, searched him and the room, and seized certain items, mainly, a personal address book.

These two searches were independent Canadian operations pursuant to their own investigation, and not initiated or instigated by, or conducted with, American assistance. However, since the investigation appeared to have some American ramifications, Sergeant Wallace kept his Drug Enforcement Administration counterpart in Vancouver, Richard Logan, informed of the developments. However, it was not until approximately August, 1975, that Sergeant Wallace was asked to photostat the documents he had seized, and give them to American authorities. (Tr. 1850-1878, 1881-1901).

The Government argued that the searches were independent Canadian operations without American initiation or participation, and that the fact that American authorities were kept abreast of information generated by the Canadian investigation was not improper. The receipt of information by American law enforcement officials was not the kind of conduct sought to be deterred by the exclusionary rule. *United States v. Callaway*, 446 F.2d 753 (3d Cir. 1971); *United States v. Nagelberg*, 434 F.2d 585 (2d Cir. 1970), *cert. denied*, 401 U.S. 939 (1971); *Stonehill v. United States*, 405 F.2d 738 (9th Cir. 1968), *cert. denied*, 395 U.S. 960 (1969).

* Sergeant Wallace testified that the searches and seizures were legal under the Canadian law, pursuant to the writ of assistance. (Tr. 1851-1854, 1857, 1872-1873).

** Whatever tapes at one time may have existed from any monitored conversation had long since been destroyed by the Canadian authorities following termination of their investigation. (Tr. 1859-1860, 1864-1867, 1883-1884).

The court below, however, granted Leong's motion to suppress, holding:

"The Court finds that sometime between April and June of 1972, the Canadian authorities had communications with Agent Logan of the Drug Enforcement Administration regarding certain narcotics transactions which involved, among other people, Victor Leong.

"The Court finds there is no direct evidence that American agents suggested either the June 10, 1972 search or the events which might be called [the] 'plan' for that search.

* * * * *

"It would appear to the Court that there was a close working relationship in the period May and June 1972, between the Canadian authorities and the American authorities, including the exchanges of names, information, and at least one photograph which appears to have been obtained during an earlier search.

"The Court finds that the cooperation between agents of the Canadian and American Governments was substantial as to duration, and also was substantial as to the information exchanged back and forth between law enforcement officials of the two governments.

"The Court has reached the following conclusions:

"Although the search did not take place at the specific direction of the American authorities, the search directly resulted from a joint venture in which agents of the United States Government had a substantial participation." (Tr. 1912-1913).

Leong now claims that the Court erred in refusing to grant his post-trial request for a hearing to determine if the evidence that the Government did introduce at

trial against him—the testimony of Lam Kin Sang—was obtained as a result of the seized material that the Court suppressed. He contends that a hearing was necessary to determine whether the material seized by Canadian authorities led the United States Government to the witness Lam Kin Sang; if so, Leong asserts, the exclusionary rule would require the suppression of Lam's testimony. *Wong Sun v. United States*, 371 U.S. 471 (1963). Leong's claim is wholly without merit and the trial court properly so found. (S. Tr. 20-21).

A. Lam's presence as a witness, and his testimony, were independent of the Canadian seizures.

As the trial court correctly concluded in denying Leong's post-trial motion, Leong made absolutely no showing that the case presented against him was in any way tainted by the Canadian seizures. In *United States v. Sapere*, Dkt. No. 75-1278 (2d Cir. February 13, 1976), slip op. 1896-97, this Court held, in the context of an illegal wiretap, that the defendant had the initial burden of making some showing of the existence of taint before he would be entitled to a hearing. Leong has not pointed to one iota of evidence showing that the Canadian seizures led the Government to Lam Kin Sang.

Indeed, all the evidence reflected in the record is to the contrary, thus obviating the necessity of a hearing, even assuming arguendo that Leong had satisfied his burden. The circumstances which led to Lam becoming a government witness were fully explored by Olsen's attorney, Mr. Katcher, in his cross-examination of Lam. (Tr. 904, 955-956, 959, 965-967). Lam testified that he was sentenced to 15 years' imprisonment in April 1973, and that two or three weeks later, the prosecutor in his case asked him if he wanted to cooperate, and he declined; that while in jail, Lam learned that Stanley was coop-

erating; that in about October, 1973, after Lam's first Rule 35 motion was denied, Lam asked his wife to contact the United States Attorney's Office and convey the information that he wanted to cooperate; and that within one or two months thereafter, Lam was visited by agents in jail, taken to New York and Washington, and his cooperation began.

Lam's cross-examination clearly demonstrated that his cooperation was the result of his own initiative, totally independent of any information which may arguably have been derived from the Canadian seizures. Indeed, at the time Lam decided to cooperate, Sergeant Wallace had not even turned over to American authorities photostats of the seized documents. That did not occur until August, 1975, by which time Lam has been debriefed many many times and his testimony thoroughly reviewed.*

The criterion in determining taint questions is "whether granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint." *Wong Sun v. United States*, *supra*, 371 U.S. at 488. Since Lam's cooperation was clearly not obtained as a result of any lead that the seized material could have provided, but was totally independent of such material, Lam's testimony was free of taint and not suppressible. Cf., *Nardone v. United States*, 308 U.S. 338 (1939); *United States v. Nagelberg*, *supra*.

* The trial in this case was originally scheduled for July 14, 1975. It had to be postponed at the last moment because Lam became ill and was hospitalized.

B. No taint hearing was required because the initial suppression ruling was either erroneous or based on the wrong grounds.

The Government submits that the court below erred initially in suppressing the items seized in Canada. The relevant evidence as the court summarized it demonstrated that American authorities neither suggested, initiated, nor participated in the challenged searches. After reviewing the evidence, the court reached the unwarranted conclusion that the search resulted from a joint venture. There was absolutely no evidence of that. All that was revealed was that Canadian authorities kept their American counterparts informed of investigations that had implications for the United States. The fact that American agents worked in close harmony with their counterparts in Canada should not be subject to criticism. Indeed, if an American agent ignored intelligence information received from a foreign law enforcement agency concerning a suspected narcotics violator who had possible American connections, that agent should be viewed as being derelict in his duty.

United States v. Cotroni, 527 F.2d 708, 711-712 (2d Cir. 1975) is in point. There, Canadian authorities conducted wiretaps, the results of which were turned over to American authorities. Since there was no American initiation, control, supervision or direction concerning the wiretap, this Court upheld its admissibility despite the Canadians' non-compliance with American constitutional and statutory requirements. The same result should have obtained in the instant case, thereby precluding the discussion of this issue. See also *United States v. Wolfish*, 525 F.2d 457, 463 (2d Cir. 1975).

The logical explanation for the court's ruling below appears to be its distress at the methods used by the Canadians, most notably the intrusion of a listening de-

vice, and therefore suppressed the evidence *sub silentio* on the grounds that the conduct shocked the judicial conscience. *United States v. Nagelberg, supra*, 434 F.2d at 587 n.1. The Government submits that the Canadians' conduct does not rise to that level, *United States v. Cotroni, supra*, 527 F.2d at 712 n.10, but even if it did, the purposes underlying the exclusionary rule would not be served by its invocation against the testimony of Lam.

The purpose of the exclusionary rule is to deter American law enforcement officials from engaging in conduct which violates individuals' constitutional rights. *Weeks v. United States*, 232 U.S. 383 (1913); *United States v. Lucchetti*, Dkt. No. 75-1221 (2d Cir. March 4, 1976) slip op. 2368-2371; *Brulay v. United State*, 383 F.2d 345, 348 (9th Cir.), *cert. denied*, 389 U.S. 986 (1967). Nothing in the record and nothing in the Court's ruling suppressing the material seized in Vancouver indicates that American officials engaged in any conduct the repetition of which should be deterred by invoking the exclusionary rule. As this Court has just said in *United States v. Kurzer*, Dkt. No. 75-1437 (2d Cir. April 14, 1976) slip op. at :

"[T]he principal function of the exclusionary rule is to deter unlawful police conduct, [citation], and it can be argued that it serves little deterrent purpose to exclude evidence which is only indirectly and by an attenuated chain of causation the product of improper police conduct."

Such is the situation in the instant case, only more so since the improper conduct, if any existed, was by Canadian, not American authorities.

POINT V**The prosecutor's summation was proper.**

Leong makes the novel argument, for the first time on this appeal and unsupported by any authority, that the prosecutor violated his Fifth Amendment right against self-incrimination and commented on his failure to testify when, in his opening summation, the prosecutor invited defense counsel to respond to portions of the Government's evidence and argument and then, in closing summation, pointed out defense counsel's failure adequately to respond. Leong asserts that when "the prosecutor, in summation, puts questions to defense counsel, he was doing no less than attempting to question the defendant through the defendant's representative." The contention is absurd.

The prosecutor did no more than attack the defense first raised by Leong's counsel in his opening statement to the jury (Tr. 78-84), which counsel thereafter tried to establish in his cross-examination of Lam Kin Sang: that Lam's testimony inculcating Leong was a lie designed to curry favor with the Government and thereby assist Lam in getting out of jail. In the prosecutor's opening summation, he argued the reasons why the jury should credit Lam's testimony, including the point that if Lam were going to lie, he would have expanded Leong's involvement over-and-above a purchaser of one-half pound of heroin. Since Leong's defense consisted of attacking the credibility of Lam, it was entirely proper for the prosecutor to make appropriate arguments and to challenge that defense, and to point out to the jury that the defense had not adequately answered those arguments. That was all that the prosecutor's remarks did. To equate that with an attempt to question the defendant or to comment on his failure to testify is utterly inaccurate.

To the extent that Leong contends that the prosecutor's opening summation forced his counsel to sum up, it need only be noted that during the latter stage of the trial, the court informed all concerned of what the order of summation was to be, and at no time did counsel for any of the defendants ever indicate the possibility that he would waive a summation. (Tr. 2120, 2126). In fact, during off-the-record discussions, the court asked all counsel for their estimates on the length of their summations, and all counsel, including Leong's, announced the time they felt they required.

Finally, Leong failed to object at trial to the portions of the prosecutor's summations about which he now complains. That failure to object or to request a curative instruction precludes review of Leong's claim on this appeal and indicates trial counsel's difficulty in perceiving any prejudice. *United States v. Canniff*, 521 F.2d 565, 572 (2d Cir. 1975), *cert. denied*, 96 S. Ct. 796 (1976); *United States v. Briggs*, 457 F.2d 908, 912 (2d Cir.), *cert. denied*, 409 U.S. 986 (1972).

POINT VI

The trial strategy of Olsen's attorney did not entitle Wong Chou Shek or Victor Leong to a severance.

During the very extensive cross-examination of Stanley by Irving Katcher, Ernst Olsen's counsel, (Tr. 466-633), Mr. Katcher attempted on various occasions to elicit information which he presumably hoped would be helpful to his double jeopardy contention. (Tr. 486, 490, 492, 504-506, 570-573, 576-577). He followed this line for a while, without objection by any defense counsel, until the prosecutor began objecting to the details of Stanley's prior narcotics transactions. (Tr. 573, 578-579).

Mr. Katcher persisted, again without objection by any defense counsel, attempting to question Stanley about prior dealings with Lee Louie (Tr. 582):

"Q. Do you recall personally having with Lam sold narcotics to Lee Louie in Chinatown?

"A. I know there was a person with the last name Lee, but I do not know who he was.

"Q. Did you make a sale of narcotics on more than one occasion to a person by the name of Lee in Chinatown in the company of Lam?

"Mr. Kaufman: Objection. This is outside the scope of direct, outside the scope of the indictment. I think if Mr. Katcher would establish a date, it would [be]come clear it is outside the scope of this case.

"Mr. Katcher: The relevancy of my question, if it does not relate to the three indictments, I will ask it be stricken.

"Mr. Kaufman: May we approach the side bar? I think Mr. Katcher said something significant.

"The Court: Yes."

At the side bar, a lengthy conference ensued (Tr. 583-594), with the prosecutor observing that it appeared that Mr. Katcher was trying to raise his double jeopardy defense before the jury, and arguing that Mr. Katcher be precluded from that line since it was an issue for the court, not the jury, to decide. Wong Chou Shek's counsel was the first defense attorney to speak, and he finally objected to Mr. Katcher's entire line of questioning which had elicited Stanley's prior transactions and requested a severance. The court observed, in denying the motion:

"Here your co-counsel has chosen to try his case in a certain way, and you have sat silently by, presumably hoping to derive some benefit from his rather extensive cross-examination. It was only

the Government which stepped forward in an attempt to stop this." (Tr. 586).

Still at the side bar, Judge Ward continued on to suggest strongly that Mr. Katcher refrain from pursuing that line of questioning. Finally, there was mention of the "three indictment" comment by Mr. Katcher, who apologized for his slip of the tongue. At that time, Louie Yiu Che's attorney moved for a severance based on that remark. The court denied the motion, which had been joined in by Leong and Wong Chou, and gave the jury a cautionary instruction requested by Leong, Wong Chou and Louie Yiu Che.*

From that side bar conference, it is clear that Mr. Katcher's "three indictment" comment, which Wong Chou and Leong ** now claim imbued the trial with a "fatal degree of taint," was of such little significance at trial that all defense counsel left it up to the Government to call for the side bar conference. Once defense counsel finally got around to objecting to the comment and requesting a severance, their motion was properly denied, and the court delivered a cautionary instruction at their request. It made absolutely clear that there were no other charges pending against Wong Chou Shek, Victor Leong and Louie Yiu Che. The curative instruction corrected

* "THE COURT: Ladies and gentlemen, a few moments ago, just before we had our side bar meeting, you heard reference to three indictments in an inadvertent slip of the tongue by Mr. Katcher. I wish to state to you that the charges contained in the indictment presently on trial are the only charges pending against Mr. Leong, Mr. Louie and Mr. Wong Chou Shek. You ladies and gentlemen here are trying the charges in this indictment in this courtroom based on the evidence you hear here. I direct you not to consider the reference which you heard in any way, shape or form." (Tr. 594).

** Leong presumably adopts this point as well. See Leong brief, Point V, p. 44.

whatever erroneous impression which may possibly have been caused by Mr. Katcher's comment.

To the extent that Wong Chou and Leong argue that they were entitled to a severance because of Mr. Katcher's entire line of questioning, they should be bound by their silent acquiescence to that strategy during Mr. Katcher's cross-examination. Their failure to object must be presumed to have been a strategic position on their part to allow the jury to hear about all of Stanley's prior dealings in the hope that it would make him a totally unlikeable and unbelievable witness. They should not now be allowed to reverse their tactical posture, and argue that evidence of Stanley's prior dealings had an impermissible spillover effect on them.

The trial court is vested with wide discretion in deciding whether to order a severance, *United States v. Turcotte*, 515 F.2d 145, 150 (2d Cir. 1975), and his determination will not be disturbed on appeal except upon a showing that he abused that discretion. *United States v. Finkelstein*, 526 F.2d 517, 523 (2d Cir. 1975). In the absence of a showing below of substantial prejudice to them, Wong Chou and Leong were simply not entitled to a severance. *United States v. Calabro*, *supra*; *United States v. Fantuzzi*, *supra*; *United States v. Borelli*, *supra*. The circumstances about which they complain did not come close to meeting such a standard for relief. Compare, *United States v. Cassino*, 467 F.2d 610, 622-623 (2d Cir. 1972), *cert. denied*, 410 U.S. 928 (1973) (insufficient prejudice shown where agent's testimony as to one co-defendant's confession implicated most other co-defendants but not the moving defendant); *United States v. Marshall*, 458 F.2d 446, 451-452 (2d Cir. 1972) (insufficient prejudice found from a co-defendant's outbursts in court); *United States v. Borelli*, *supra*, 435 F.2d at 502-503 (insufficient prejudice shown where Government wit-

ness testified against both defendants at trial and, in strengthening the witness' credibility, the Government introduced physical evidence against the co-defendant which could not otherwise have been introduced against the defendant); *Brown v. United States*, 375 F.2d 310, 315-316 (D.C. Cir. 1966), *cert. denied*, 388 U.S. 915 (1967) (insufficient prejudice found to warrant a severance where an insane co-defendant threw a fit at trial).

POINT VII

The reading into evidence of a redacted version of an agreement between Lam Kin Sang and the Government covering Lam's cooperation was not error.

Prior to the trial in this case, Lam Kin Sang, who had vacillated a bit about being a witness, entered into an agreement with the Government on June 30, 1975 covering the terms of his cooperation. (GX 40 for identification). * During the direct examination of Lam, the Government elicited a few aspects of the agreement. Little more emerged than Lam's statement that if he testified, the United States Attorney would inform the Judge and Lam's parole officer. (Tr. 724). Further examination was hampered by Lam's frank admission that "I cannot remember a lot. I can only remember a little." (Tr. 724). At that point an offer of the agreement was objected to by defense counsel and the document was not admitted. (Tr. 726-727).

On cross-examination, the major attack of the defense was to develop possible inconsistencies in Lam's testi-

* See Addendum 3 for the terms of the agreement.

mony in order to impeach and discredit him. This is not, of course, a surprising tack for the defense to take. But in this case the defense went further, suggesting to the jury that Lam's testimony was biased or falsified at least in part as the result of improper dealings by the Government, consisting of a combination of threats and promises which ended in the June agreement and produced the testimony which the defense questioning sought to show was untrue. (Tr. 881-886).

Thus, counsel for Victor Leong, after delving into the threats, inquired about Lam's hopes for reduction of sentence and promises made by agents for his cooperation, and continued on to the terms of the contract itself, eliciting how much money Lam was receiving under the contract. (Tr. 924-926).

Counsel for Wong Chou Shek followed a similar course, asking Lam about the Government threats, about his hopes for reduction of sentence, and then continuing in some detail on the financial arrangements of the contract. (Tr. 1070-1073, 1105-1106).

This passed well beyond the terms of the direct testimony. It elicited only those aspects of the agreement likely to leave the impression that Lam's testimony was dictated solely by self-interest and—set in the context of alleged threats made by the Government—sought to create the impression that the Government was extracting Lam's testimony with no regard for the truth but for the sole purpose of convicting the defendants.

In a similar context, this Circuit has stated:

“But the Government could not be expected to remain silent in the face of a claim, vigorously developed by defense counsel in cross-examining [the witness] and presumably to be further ex-

ploited in summation, that it had procured false [grand jury] testimony by threats—a claim which, if credited by the jury, would have an effect far beyond the destruction of [the witness'] grand jury testimony.”

United States v. Rivera, 513 F.2d 519, 528 (2d Cir. 1975), *cert. denied*, — U.S. — (1976).

In order to counter that impression, it was necessary to lead Lam through some technical redirect examination relating to subpoena power and the sanctions of contempt (Tr. 1111-1127), and also to acquaint the jury with the actual terms of the agreement. After argument and submission of briefs (Tr. 1190-1206), the court permitted a redacted version of the agreement (GX 44 for identification) to be read to the jury. (Tr. 1643-1663).*

Agreements between the Government and accomplice witnesses have been the subject of dispute in other cases. The Government reached an agreement with Michael Hellerman, the admissibility of the contents of which has been disputed in at least two cases. In *United States v. Tramunti*, 500 F.2d 1334 (2d Cir.), *cert. denied*, 419 U.S. 1079 (1974), Hellerman testified briefly to the bare outline of his understanding with the Government. This was done over objection. (Tramunti Tr. 60-61). On cross-examination the defense emphasized Hellerman's lies and falsehoods in the past and the benefits he received from his agreement with the Government. On redirect, the Government offered the entire agreement with Hellerman. The defense objected to the introduction of certain parts of the agreement and it was redacted. (Tramunti Tr. 163-165). The redacted version was received in evidence over a cryptic objection which left it

* See Addendum 4 for a copy of the redacted agreement.

unclear as to whether the objection went to admitting any of the document or the version as redacted. (Tramunti Tr. 177).

On appeal the defendant took the position that the admission of the document was reversible error in that it amounted to the Government vouching for its own witness. The Court Appeals was so unimpressed by this argument that it swept it aside at the end of an extensive opinion as unworthy of discussion and "without merit." 500 F.2d at 1350.

In *United States v. Aloï*, 511 F.2d 585 (2d Cir.), *cert. denied*, — U.S. —, 44 U.S.L.W. 3344 (December 8, 1975), the scenario with Hellerman appears to be much the same. The defense attacked Hellerman's past record, and the Government "in turn introduced an agreement it had made with Hellerman under which he purportedly committed himself to tell the truth in exchange for many leniencies and financial benefits." 511 F.2d at 591.

The Court reviewed the admission of the Hellerman agreement in light of all the circumstances in the case and finding that the question of credibility was properly presented to the jury, refused to rule in favor of the defendants' contention that they were denied a fair trial. 511 F.2d at 597-598.

A parallel situation, though without the admission of a document, is found in *United States v. Rosson*, 441 F.2d 242 (5th Cir.), *cert. denied*, 404 U.S. 843 (1971). There a plea bargain had been struck between an accomplice bank robber and the Government. On cross-examination the defense inquired into certain elements of the plea bargain in detail. On re-direct the Government brought out other aspects of the bargain and the defense based its appeal in part on this testimony.

The Court ruled that the re-direct was proper:

"If the defense relies upon the existence of the plea bargain to attack the credibility of the witness, it is not then entitled to preclude the jury from being apprised of additional matters relevant to the bargain so as to leave an incorrect inference that the witness has made a better bargain for himself . . . than in fact was made." 441 F.2d at 244.

Under the rulings of the Second Circuit in *Tramunti* and *Aloi* and under the principle cogently set forth by the Fifth Circuit in *Rosson*, the agreement with Lam was admissible. However, the court below did not even go that far. Rather, it allowed the Government only to read the redacted agreement to the jury under Fed. R. Evid. 803(5):

"A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party."

There was no question that Lam's recollection was incomplete; he said so explicitly on direct examination. (Tr. 724). On cross, with leading questions and the document in their hands, defense counsel were able to elicit more of the agreement favorable to the impression which they wished to create of Lam's testimony. It was essential to full and accurate testimony that the rest of the document, properly redacted, be read to the jury.

CONCLUSION

The judgments of conviction should be affirmed.

Respectfully submitted,

ROBERT B. FISKE, JR.,
*United States Attorney for the
Southern District of New York,
Attorney for the United States
of America.*

ALAN R. KAUFMAN,
JOHN C. SABETTA,
*Assistant United States Attorneys,
Of Counsel.*

ADDENDA

1a

(Government Exhibit 1 for Identification)

(Two Pages of Offsets)

(Government Exhibit 40 for Identification)**MEMORANDUM AGREEMENT**

June 30, 1975

To: Lam Kin Sang

From: Alan R. Kaufman
Assistant United States Attorney

Subject: Terms of Lam Kin Sang's Cooperation with the United States Attorney's Office for the Southern District of New York and the Drug Enforcement Administration.

This memorandum sets forth all the terms and conditions of Lam Kin Sang's cooperation with the United States Attorney's Office for the Southern District of New York and the Drug Enforcement Administration (hereinafter "Government").

1. Lam Kin Sang has agreed to cooperate fully with the Government and to give complete, accurate and truthful information to the Government concerning all criminal matters about which he has knowledge. This cooperation includes his testifying at any trial at which the Government determines his information and knowledge would constitute relevant testimony.

2. Lam Kin Sang has previously made a motion to reduce his sentence under Rule 35 of the Federal Rules of Criminal Procedure, which motion was denied by the Judge because it was not made within 120 days after Lam Kin Sang's sentence was final as required by the Rule.*

* A Rule 35 motion was also made on Lam's behalf within the 120 day period, but before he had decided to cooperate. That motion was denied.

(Government Exhibit 40 for Identification)

Despite this, Lam Kin Sang has requested that the Government inform the Judge of Lam Kin Sang's cooperation, and the Government has agreed to do this, though Lam Kin Sang has been told by the Government that the Judge is without the power to change his sentence in any way.

3. The Government will make part of Lam Kin Sang's prison record a letter setting forth the extent of his cooperation, and will bring that cooperation to the attention of the Parole Board, and request that the Parole Board give his cooperation whatever consideration it deems appropriate in deciding whether to grant parole.

4. If Lam Kin Sang, or his attorney, requests a presidential pardon, the Government will inform the Pardon Attorney in Washington, D.C. of the extent of his cooperation and similarly request that it be given appropriate consideration.

5. In view of the fact Lam Kin Sang has a family consisting of a wife, three children, and a father, without visible means of support, the Government will attempt to procure a small, monthly living expense allowance sufficient to help the family meet the basic necessities of life, not to exceed \$150 per month.

6. In view of the fact that Lam Kin Sang has testified, and will testify, against major narcotics violators who could pose a threat to his life, the Government will seek authorization to have Lam and his family relocated upon his release from jail, and put into the United States Marshal Witness Protection Program.

7. The Government will inform the Immigration and Naturalization Service of the extent of Lam Kin Sang's

(Government Exhibit 40 for Identification)

cooperation, and advise the Immigration and Naturalization Service that the cooperation should be given appropriate consideration when they are called on to decide if Lam Kin Sang should be deported, upon his release from jail. In addition, the Government will advise the Immigration and Naturalization Service that if deported to Hong Kong, the location from which Lam Kin Sang came to the United States, Lam Kin Sang's life would in all likelihood be in jeopardy due to his cooperation.

8. When Lam Kin Sang completes his testimony, the Government will request that the Bureau of Prisons designate Lam Kin Sang to the Federal Correctional Institution at Danbury, Connecticut.

9. In the event that Lam Kin Sang refuses to testify, or withholds information, or fails to tell the truth, this agreement is vitiated. If Lam Kin Sang fails to be truthful under oath, it is understood that the Government may prosecute him for perjury.

s/ LAM KIN SANG

PAUL J. CURRAN,
*United States Attorney for the
Southern District of New York.*
By: s/ ALAN R. KAUFMAN
Assistant United States Attorney

Translated to Lam Kin Sang
by Laura Ho who hereby states
that she read this memorandum. agreement
to Lam Kin Sang in Cantonese, and that
he stated to me that he fully understands
the contents hereof.

s/ LAURA HO

(Government Exhibit 44 for Identification)

IT IS HEREBY STIPULATED AND AGREED between the defendants Victor Leong, Ernst Olsen, Wong Chou Shek, and Louie Yiu Che by their attorneys, David Keegan, Esq., Irving Katcher, Esq., Harry Singer, Esq., and Robert Hartmann, Esq., respectively, and Paul J. Curran, United States Attorney for the Southern District of New York by Alan R. Kaufman, Assistant United States Attorney, that the relevant provisions of the agreement that Lam Kin Sang signed on June 30, 1975, pertaining to his cooperation with the Government, are as follows:

1. "Lam Kin Sang has previously made a motion to reduce his sentence under Rule 35 of Federal Rules of Criminal Procedure, which motion was denied by the Judge because it was not made within 120 days after Lam Kin Sang's sentence was final as required by the Rule.* De te this, Lam Kin Sang has requested that the Government inform the Judge of Lam Kin Sang's cooperation, and the Government has agreed to do this, though Lam Kin Sang has been told by the Government that the Judge is without the power to change his sentence in any way."

2. "The Government will make part of Lam Kin Sang's prison record a letter setting forth the extent of his cooperation, and will bring that cooperation to the attention of the Parole Board, and request that the Parole Board give his cooperation whatever consideration it deems appropriate in deciding whether to grant parole."

3. "If Lam Kin Sang, or his attorney, requests a presidential pardon, the Government will inform the Par-

* A Rule 35 motion was also made on Lam's behalf within the 120 day period, but before he had decided to cooperate. That motion was denied.

(Government Exhibit 44 for Identification)

don Attorney in Washington, D.C. of the extent of his cooperation and similarly request that it be given appropriate consideration."

4. "In view of the fact Lam Kin Sang has a family consisting of a wife, three children and a father, without visible means of support, the Government will attempt to procure a small monthly living expense allowance sufficient to help the family meet the basic necessities of life, not to exceed \$150 per month."

5. "The Government will inform the Immigration and Naturalization Service of the extent of Lam Kin Sang's cooperation, and advise the Immigration and Naturalization Service that the cooperation should be given appropriate consideration when they are called on to decide if Lam Kin Sang should be deported, upon his release from jail."

6. "When Lam Kin Sang completes his testimony, the Government will request that the Bureau of Prisons designate Lam Kin Sang to the Federal Correctional Institution at Danbury, Connecticut."

7. "In the event that Lam Kin Sang refuses to testify, or withholds information, or fails to tell the truth, this agreement is vitiated. If Lam Kin Sang fails to be truthful under oath, it is understood that the Government may prosecute him for perjury."

AFFIDAVIT OF MAILING

State of New York)

:

ss.:

County of New York)

ALAN R. KAUFMAN, being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the 22nd day of April, 1976 he served 2 copies of the within brief by placing the same in a properly postpaid franked envelope addressed:

Irving Katcher, Esq.
38 Park Row
New York, New York

Henry Boitel, Esq.
233 Broadway
New York, New York

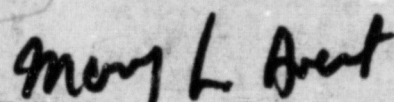
Gasthalter & Pollok
233 Broadway
New York, New York.

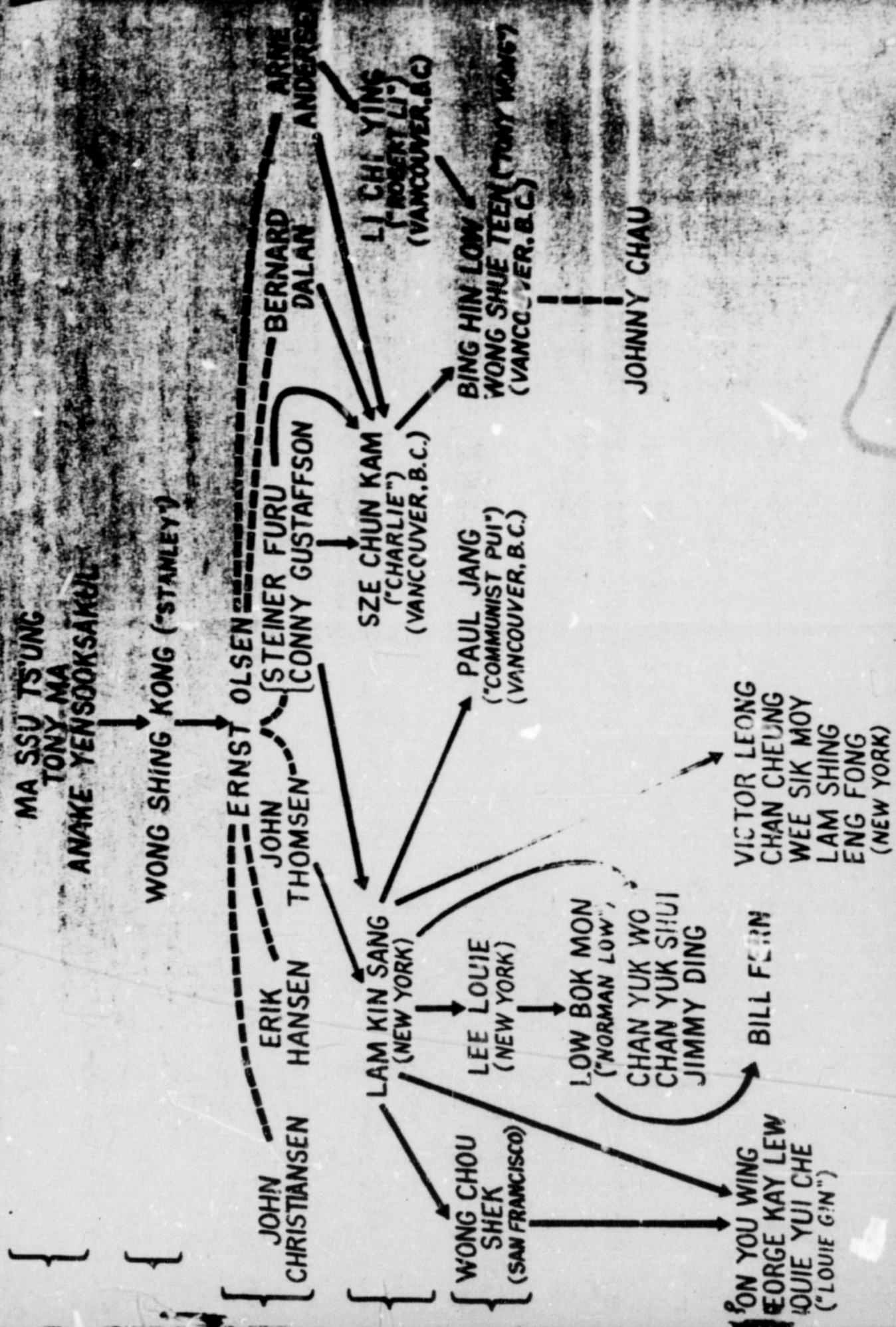
And deponent further says that he sealed the said envelope, and placed the same in the mail box for mailing outside the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.


ALAN R. KAUFMAN

Sworn to before me this

22nd day of April, 1976.


MARY L. AVENT
Notary Public, State of New York
No. 03-4590237
Qualified in Bronx County
Cert. filed in Bronx County
Commission Expires March 30, 1977



THAILAND

MA SSU T'SUNG
TONY MA
ANEK
WONG SHING KONG
("Stanley")
SZE CHUN KAM
("Charlie")

SEAMEN

ERNST OLSEN
STEINER FURU
CONNY GUSTAFFSON
JOHN CHRISTIANSEN
ERIK HANSEN
JOHN THOMSEN
ARNE ANDERSEN
BERNARD DALAN

NEW YORK

LAM KIN SANG
LEE LOUIE
NORMAN LOW
VICTOR LEONG
BILL FERN
CHAN CHEUNG
ENG FONG
LAM SHING
WEE SIK MOY
CHAN YUK SHUI
CHAN YUK WO
JIMMY DING

SAN FRANCISCO

WONG CHOU SHEK
PON YOU WING
GEORGE KAY LEW
LOUIE YIU CHE
("Louie Gin")

VANCOUVER

BING HIN LOW
WONG SHUE TEEN
ROBERT LI
JOHNNY CHAU
PAUL JANG
("Communist Pui")

ADDENDUM 2 (CX-19 for
identification)